HUMAN RIGHTS COMPLAINT

CASE CONCERNING CONTINUED, SYSTEMIC ABUSE OF VULNERABLE INDIVIDUALS AND THEIR FAMILIES IN THE UNITED STATES IN VIOLATION OF THE PRINCIPLES AND TENETS OF INTERNATIONAL LAW

BRIEF FOR THE VICTIMS OF THE AFOREMENTIONED HUMAN RIGHTS ABUSES AND CRIMES AGAINST HUMANITY

Submitted :

on Behalf of Elizabeth Eklund,
Sharyn Eklund
and the Victims Cited Herein

TABLE OF CONTENTS

TABLE OF AUTHORITIES

See all cited Authorities listed in the SUPPORTING DOCUMENTATION.

CASES

Sigurjonsson v. Ireland, Application No. 16130/90, Eur. Comm. H.R., decision of July 10, 1991, 12 Hum Rts L.J. 402 (1991)

See Akdivar v. Turkey, Judgment of Sept. 16, 1996, Reports 1996-IV, 1210-11; Selcuk and Asker v. Turkey, 24 April 1998, Reports 1998-II 891; Aksoy v. Turkey, Reports1996-VI, 2260, para. 531 (1997)

Guardianship of Zaltman, 65 Mass App. Ct. 678 (2006)

Mathews v. Eldridge, 424 U.S. 319, 332 (1975)

Mills et all v. Rodgers et al, 457 U.S. 291; 102 S. Ct. 2442; 73 L. Ed 2d 16, 1982

See Williams v. Adkinson, 792 F. Supp. 755, 757 (M.D. Ala. 1992)

See all cited cases listed in the SUPPORTING DOCUMENTATION.

VICTIMS' TESTIMONY

PRESENTED AT THE US CAPITOL AND AT STATE VENUES

(SEE EXHIBITS)

Testimony of a Victim from Tarrant County, Texas

Letter to US Department of Justice, Civil Rights Division

Testimony of a Victim's Family from Florida

Testimony of a Victim's Family from New York

Testimony of a Victim's Family from the state of Washington

Testimony of a Victim's Family from Texas

Testimony of a Victim's Family from Maryland

Testimony of a Victim's Family from the state of Washington

Testimony of a Victim's Family from Massachusetts

Request for Precautionary Measures

The Court, on its own or at the request of a party, asks the State concerned to adopt precautionary measures to prevent further irreparable harm to persons.

The Petitioner feels that continued, unabated abuse of these vulnerable individuals exacerbates health and safety issues, and has in given instances led to untimely deaths.

Exhaustion of Domestic Remedies

A given number of plaintiffs have gone through the United States Judicial System concerning abuse and theft of their assets, but have been denied the relief sought due to legislative design.

However, due to (1) the adverse health and safety issues precipitated by these human rights abuse, (2) the need for expedited attention and relief pursuant to the request for precautionary measures, (3) the pursuit of domestic remedies which have been consistently unsuccessful,[i] and (4) the existence of "special circumstances"[ii] - i.e., the inaction of state and national authorities when presented with charges of misconduct and infliction of harm on these vulnerable individuals by state agents, Petitioner requests an exemption to the requirement of exhaustion of domestic remedies as required by the court Rules as needed.

Jurisdiction

The US is a member of the UN and a voting member of the UN Security Council; and as a member State of the UN, the US has agreed that it has the following obligations under the Charter to advance "universal respect for, and observation of" the rights proclaimed in the Universal Declaration of Human Rights,[iii] which has become a basic component of international customary law, binding all States, not merely members of the UN.

The US considers itself bound by obligations under Article 16 to prevent "cruel, inhuman or degrading treatment or punishment," only to the extent that "cruel, inhuman or degrading treatment or punishment" means that said acts are prohibited by the Fifth, Eight and/or Fourteenth amendments to the US Constitution.

President Clinton proclaimed that "it shall be the policy and practices of the Government of the United States...fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR, the CAT, and the CERD."[iv]

Article 20 authorizes the Committee to initiate an inquiry when presented with "reliable information" reflecting "well-founded indications that [severe pain or suffering, whether physical or mental, is intentional] and systematically practiced in the territory of a State Party"[v] - i.e., human rights abuses which can be argued are crimes against humanity.

UN Charter Article 24, indicates that the Security Council acts on behalf of its members to maintain international peace and security; thus it can refer a case to the ICC prosecutor especially if that case has solid claims demonstrating grave impact on the health and safety of a substantial part of the population of a member State.

Moreover, the US is a member of the OAS; has accepted its four basic principles -one such principle is the observance and defense of human rights; and has ratified the ICCPR in 1991.

President Bush felt that the Covenant was "entirely consonant with the fundamental principles incorporated in our Bill of Rights" and that ratification by the US would "strengthen our ability to influence the development of appropriate human rights principles in the international community."

PRELIMINARY STATEMENT

Every year thousands of Americans are subjected to court appointed guardians because allegedly they are not competent to function on their own.[vi] With apparently few procedural protections in place, a profit-driven professional guardianship industry has developed that enriches itself at the expense of the elderly who have been designated for its protection.[vii] There have been many attempts at reform; however, most states have made little effort to monitor professional guardians and prevent guardianship abuse of the elderly.[viii]

Guardianship is for individuals who lack the ability to care for themselves and who lack the support of family and friends.[ix] However, in many jurisdictions, there is an apparent lack of due process and the standard for proof that a petitioner for guardianship must show the court varies – i.e., in some states, a petitioner is only required to show that the proposed "incompetent" elderly person was more likely than not incapable to manage her own affairs;[x] in Massachusetts, until recently, medical documentation has been limited with perhaps just a sentence describing the medical condition; whereas in other states, a petitioner must submit clear and convincing evidence of a proposed incompetent person's incapacity.[xi]

The end of an authorized guardianship occurs when one of the following events happens: the "incapacitated" elderly person dies, regains competency or a determination is made that there is no valid reason to continue guardianship; the elderly person's entire estate has been spent down by the guardian such that bills are no longer able to be paid; or the guardian has engaged in some form of misconduct upon which hopefully the court takes action.[xii]

In 1987, Bayles and McCartney found that guardianship was becoming a business with "plenty of opportunities for accountants, lawyers, and banks to earn money…"[xiii] "Professional guardianship does not come cheap;" and "[i]n many situation, once the money is gone, professional guardians petition the court to end their service, leaving the ward…in a legal no-man's land."[xiv] The AP report found that incapacitate people "[h]ave more protection from someone putting a roof on [their] house than [they did] from someone who [could] put [them] in a nursing home."[xv]

These human rights abuses extend to vulnerable individuals of all ages, with little or no cognitive impairment and a range of physical limitations and to those individuals with given cognitive/physical limitations. The driving factor in these crimes against humanity is the amount of personal assets that are coveted and targeted for pillaging

The Statement of Facts will focus on a given case; however, multiple other cases will be presented in the attached testimony included as Exhibits.

QUESTIONS PRESENTED

1. Whether few procedural safeguards in the US "guardianship" system violates international human rights law and the associated principles of international customary law?

2. Whether there is a State example of the overall decay and dysfunction of the probate/guardianship system?

3. If so, then whether there has been substantial injury or suffering to individuals victimized by this system?

STATEMENT OF FACTS

Unfortunately, elder abuse and elder abuse by guardian are a national problem. In 1991, approximately 2.5 million people were victims of a given type of elder abuse.[xvi] This is an underreported crime and it is estimated that for every reported case, there may be as many as 14 unreported cases.[xvii] Underreporting notwithstanding, elder abuse complaints have increased 150 percent from 1986 to 1996,[xviii] and by 2030 there will be more than twice the 1990 census of elderly – i.e., 70 million older individuals.[xix]

It appears that approximately 5 percent of the elderly in the United States are victims of abuse each year.[xx] Another source cites 10 percent annually abused.[xxi] The categories of elder abuse are as follows:[xxii]

1) neglect/breach of fiduciary duty: ~ 55-58%
2) physical abuse: ~ 14-15%
3) financial exploitation: ~ 12%
4) emotional abuse: ~7-8%
5) sexual abuse: ~ 0.3%
6) all other types of abuse: ~ 6%

It appears that approximately 13-18% of elder abuse is perpetrated by individuals serving as a fiduciary – i.e., guardian/attorney/conservator/trustee, personal representative, insurance agent, financial agent, etc.[xxiii] Approximately 4-7% of the abuse is done by private/voluntary service providers such as caregivers unrelated to the elder.[xxiv]

A 2010 report indicated that there are about 6 million elder abuse cases each year;[xxv] with Massachusetts having 133,346 elder abuse cases out of an elder population of 1,207,231.[xxvi]Anyone can be appointed as a guardian. Many are lawyers, but as one professional guardian admitted, "[he] could be a shoe salesman at a five and dime store one day and a professional guardian the next."[xxvii]

Guardianship based on an economic motive traces back to feudal England where landholders were required to make payments to the king; and when these landholders were disabled by some infirmity, payment was made through an appointed individual "not for the benefit of the [landholder], but for the benefit of the king."[xxviii] "The notion of money has always been a motivating factor behind guardianship law."[xxix] Then, as now, to obtain a guardianship, there must be assets; and "without the existence of assets, nobody [cares]."[xxx]

These so-called guardians are driven by an economic motive and not concern for an incapacitated person; they cultivate relationships with hospitals, clinicians, government agencies responsible for the elderly, attorneys, and courts; and capitalize on an economic opportunity resulting from the infirmity of others to compensate themselves from the assets of these vulnerable individuals for services they may or may not have provided. They are repeat participants in a broken guardianship system and are masterful at manipulating said system to the disadvantage of the incapacitated individual.[xxxi]

In the process of seeking clients, these so-called guardians look for individuals with money. As Los Angeles' busiest conservator so aptly stated her objective, she set a minimum of $300,000 which she felt was enough money to "guarantee her paycheck for at least a few years, if the client lives that long."[xxxii]

Once the client has been identified, it's an easy matter to invoke the procedural loopholes for an emergency guardianship. Between 1997 and 2003, in Southern California, more than half of the guardianship petitions filed by so-called professional guardians were granted on an emergency basis.[xxxiii] Fifty-six percent of these appointments were granted without notice to the proposed incapacitate person; and granted without a lawyer selected as a representative in 64 percent of the appointments; and granted without a mandatory court investigator's report in at least 90 percent of the appointments – i.e., before a judge even decided that a conservator/guardian was needed.[xxxiv]

In California, there are approximately 500 professional conservators, overseeing 1.5 billion in assets and controlling 4,600 vulnerable adults, who have their needs ignored, who have been isolated from family and friends, who have their estates despoiled, who are subjected to excessive billing, and who find it quite difficult to extracted themselves from the grasp of these unwanted guardians – paying for their own legal fees and those of the unwanted guardian.[xxxv]

Public guardianship in California is not a better alternative to for-profit guardianship. There is a lack of funding, lack of staff, and a long waiting list of seniors seeking help.[xxxvi] When the LA Public Guardian's Office was asked about its backlog, the "agency adopted a new policy: it started rejecting people faster.[xxxvii] The agency now rejects more than four of five citizens referred for help."[xxxviii]

Massachusetts is faced with similar guardianship abuses which will be delineated in the next section. Furthermore, as of 2008, judges were not authorized to appoint counsel in guardianship cases except in rare circumstances, and limited in appointing guardians ad litem due to budget restrictions.[xxxix]

ARGUMENT I

FEW PROCEDURAL SAFEGUARDS AND AN AILING, FAILING US GUARDIANSHIP SYSTEM VIOLATES INTERNATIONAL HUMAN RIGHTS LAW AND THE ASSOCIATED PRINCIPLES OF INTERNATIONAL CUSTOMARY LAW

Since there is no national system of guardianship,[xl] state guardianship laws are inconsistent and usually deprive "incompetents" of all their decision-making rights. Such abuses within the probate court system came to the forefront with an investigation done by the Associated Press in 1987.[xli] This investigation highlighted the fact that alleged "incompetents" were receiving "cursory evaluations by doctors not trained to assess capacity, [and] ineffective due process protections, poor advocacy …, and [being subjected to the] inability of overworked courts to monitor existing guardianships…"[xlii]

In 1988, the ABA convened the Wingspread Conference to produce guardianship reform recommendations.[xliii] In 1997 a Uniform Guardianship and Protective Procedures Act (UGGPA) was finalized and approved by the National Conference of Commissioners on Uniform State Laws to function as a statutory model for state guardianship law consistency;[xliv] but without a federal statute to impose certain federal standards concerning guardianship, states failed to improve their guardianship systems and safeguard the rights of the elderly subjected to these systems.

In 2001, a second national guardianship conference, Wingspan, was convened to again address guardianship reform issues,[xlv] proposing a change from "zealous advocate for the client" with "hurtfully scorched-earth, zero-sum tactics that multiply financial and economic costs" "to a recommended requirement of responsible advocacy."[xlvi] The goal was to create a blueprint for local, state, and national action.[xlvii]

However good the intentions, in reality the implementation of these proposed safeguards has been slow in coming and actually practiced in the courtroom. In many jurisdictions, appointing a lawyer to represent proposed incapacitate elderly who cannot afford representation, is not required nor is the requirement that the proposed incapacitated person be present at the hearing followed.[xlviii] Not until 2009 did the Massachusetts probate code require "the court to appoint counsel on behalf of the [incapacitated person] if the [incapacitated person or someone on his or her behalf [requested] counsel, or if the court [determined] that the [incapacitated person] may be inadequately protected;" and indicated that "the court shall give consideration to the [incapacitated person's] choice" in appointing counsel."[xlix]

"The typical ward has fewer rights than the typical convicted felon – [he] can no longer receive money or pay [his] bills [or access his property to retain a lawyer]. By appointing a guardian, the court entrusts to someone else the power to choose where [he] will live, what

medical treatment [he] will get and, in rare cases, when [he] will die. It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen…"[l]

Any government action, such as guardianship, depriving an individual of liberty or property interest within the meaning of the Fifth and Fourteenth Amendment Due Process Clauses, must provide procedural due process safeguards pursuant to Mathews v. Eldridge.[li] Yet, in a study of probate court proceedings in ten states, guardianship petitions were granted in 94 percent of the cases involving individuals aged 60 or older with guardianship authority limited in only 13 percent of those cases.[lii] Such unlimited guardianship authority enhances the danger that the alleged incapacitated person may be deprived of fundamental rights without due process.[liii]

Whatever happened to proper notice and a hearing, a mandated standard of proof, appointment of counsel, the right to be present at any hearing, the right to exclusion of hearsay, and every other protection afforded in criminal, juvenile, or civil commitment cases? In 92 percent of guardianship cases filed, the respondent was absent; [liv]and only recently was the Massachusetts probate court system mandated to require medical certification regarding guardianship and appoint of counsel for alleged incapacitated individuals.[lv] Thus, the court does not hear the voice of the alleged incapacitated person because the guardian is ignoring it.[lvi]

Guardianship abuse runs the gamut from theft of a ward's assets, charging excessive fees, selling property without permission, violating SJC Rule 1:07 (7) and paying themselves without court approval, failing to file accounts, failing to turn over needed financial information so that other fiduciaries could file their accounts, blocking contact with loved ones, taking wards out of their home and placing them elsewhere against their will, using chemical restraints, etc.[lvii]

In September, 2010, the U.S. Government Accountability Office (GAO) issued its report on Guardianships, Cases of Financial Exploitation, Neglect, and Abuse of Seniors.[lviii] In this report, it "identified hundreds of allegations of physical abuse, neglect and financial exploitation by guardians in 45 states and the District of Columbia between 1990 and 2010."[lix] It then looked at closed cases and found that $5.4 million in assets was "stolen or improperly obtained" from 158 incapacitated individuals by their guardians.[lx]

Such cases involved a for-profit guardian in Missouri who embezzled more than $600,000 and physically neglected the ward; a for-profit agency in Alaska that victimized approximately 78 individuals by stealing at least $454,000 over four years; and a for-profit guardian couple in Kansas (licensed social worker and a registered nurse) who victimized 20 individuals of various ages with mental incapacities by subjecting them to physical and sexual abuse and filthy living conditions.[lxi]

Based on its research, the GAO found that state courts failed to (1) adequately screen potential guardians, (2) oversee guardians after their appointment and step in to prevent the

continued abuse of vulnerable seniors and their assets, and (3) communicate with federal agencies once aware of abusive guardians.[lxii]

Many of these courts fail to track the number of guardianships for which they have monitoring responsibility.[lxiii] Many jurisdictions do not have records of guardianship appointments readily available (e.g., online).[lxiv] State courts and federal agencies fail to "notify other oversight entities when they declare an individual to be incapacitated," and fail to "share information with each other in instances in which a guardian or a representative payee has abused a ward."[lxv] Furthermore, though some federal agencies identify guardians who function as representative payees and screen the names against a list of felons, they do not maintain a list of all court appointed guardians.[lxvi]

The GAO "could not locate a single Web site, federal agency, state or local entity, or any other organization that compiles comprehensive information on [the] issue [of guardianship abuse]."[lxvii] Many more abuse cases have been presented at a Hearing before the Subcommittee on Crime, Terrorism, and Homeland Security of the Committee on the Judiciary, U.S. House of Representatives.[lxviii]

Compounding the problem of guardianship abuse is the fact that some judges seem more concerned with protecting the guardians at the expense of the wards. This issue was highlighted in the Washington Post article where a guardian, removed several times from the D.C. guardian appointment list for failing to appear at hearings, continued to receive new assignments because certain judges bypassed the official list; her caseload accounted for 15 percent of all D.C. guardianship cases.[lxix] This practice of protecting guardians was defended by a former chief probate judge who stated that "[y]ou have to be careful about barring someone from cases. It may be the lawyer's only source of practice."[lxx]

ARGUMENT II

HUMAN RIGHTS ABUSES WITHIN THE US "GUARDIANSHIP" SYSTEM EXIST NATION-WIDE

One such example is as follows (with testimony of other examples attached).

FAILED SYSTEM IN MASSACHUSETTS

Firstly, the Probate Court System is flawed at every level. The following four functional parameters illustrate the overall decay and dysfunction within the Massachusetts Probate Court system.

(1) **Personnel Problems**

(a) Since 2001, there have been lay-offs of at least 123 court employees.[lxxi]

(b) Since approximately 2004, documentation regarding First Justice, Middlesex Probate Court, Edward J. Rockett has been generated indicating that he apparently spent "good chunks of time away from the courthouse."[lxxii] He was suspended for two weeks,[lxxiii] and then in 2005, Robert W. Langlois became Acting First Justice.[lxxiv] This action resulted in certain friction between these justices until J. Rockett was allegedly forced to retire in 2007, in part for misusing state resources.

(c) Since 2008, four judicial vacancies have occurred in Middlesex Probate Court system, with 15 judicial probate court vacancies state-wide.[lxxv]

(d) Middlesex Register of Probate, John R. Buonomo, pleaded guilty in October, 2009 to more than 30 felony charges resulting in a 2 ½ year sentence and a $100,000 fine.[lxxvi]

(2) **Infrastructure**

(a) The Middlesex Probate Court building opened in 1898. Over the years upkeep has been neglected such that there is peeling paint; chipped steps; fissures across floor surfaces; decrepit and unclean restrooms; old, broken oak benches; limited accommodations for disabled visitors; faulty HVAC system(s); work space not conducive to efficiency; and environmental concerns – e.g., lead paint, asbestos.[lxxvii]

(b) More than 26,000 cases are filed a year in a facility that is antiquated, crowded and chaotic. Middlesex Probate & Family Court's jurisdiction encompasses 54 cities and towns which necessitates four separate satellite sessions.[lxxviii]

(c) The Middlesex Probate Court's filing system consists of a "hole in the wall" with a "chute used for delivery of files from a third-floor storage area."[lxxix]

(d) Files are missing on a regular basis. "There's a 50-50 chance [that] the papers [in the case] are not where they're supposed to be." [lxxx]Each time that I have had to access a file, it has taken me a minimum of 2 hours to locate it. Even when a file was in their possession, I have had clerks tell me that they didn't know the location of the file.

(e) The Middlesex Probate Court has "long [been] plagued by delays in case processing and shoddy recordkeeping."[lxxxi]

See articles entitled "Courthouse Building Spree in Massachusetts Continues Despite Economy," dated 12/12/09, for more information on the crumbling court buildings in that State; and "Frustrated Probate Lawyers Request Task Force on Court's Filing System," dated 3/3/08 for administrative mismanagement.

(3) **Budget Cuts**

(a) Due to economic difficulties, the Massachusetts Probate Court system has faced and faces possible closing of nine satellite sessions and lay-offs of court employees, and reduction in funds to retain interpreters and appoint guardians ad litem.[lxxxii]

(b) Staff reduction, inability to hire, and increased number of filings [65 to 75 contested hearings on each of a judge's motion and contempt days] extend the time to get a court date. It can take 3 to 4 months to have something placed on a docket because of insufficient staff to process the paperwork.[lxxxiii]

(c) The website for the Middlesex County Probate and Family Court was discontinued due to lack of funds.[lxxxiv]

(d) Loss of ten staffers in 2009 left the Middlesex Probate Court "unable to effectively staff both the Concord and Cambridge sessions."[lxxxv]

(e) Due to "slow trickle of judicial appointments issuing from the Governor's Office," the Middlesex Probate Court "redistributed docket numbers among its sitting judges [based on] judges' productivity" – i.e., more efficient judges receive more cases; but efficiency doesn't guarantee that cases are not rubber-stamped.[lxxxvi]

(4) **Massachusetts Lawyer Misconduct encompasses such issues as**

(a) mishandling of guardianship estate and failing to file accounts;[lxxxvii]

(b) failing to conclude the administration of an estate, or file or complete guardianship applications; failure to provide a timely accounting; and failure to communicate with clients; [lxxxviii]

(c) failing to provide an accounting of the client's funds promptly upon request; failing to deliver itemized bill and provide written notice of withdrawal and statement showing balance of client's funds per Mass. R. Prof. C. 1.15 (d)(1)-(2);[lxxxix]

(d) charging excessive fees;[xc] and

(e) charging "outrageous fees" and "engaging in egregious conduct".[xci]

Secondly, the Massachusetts guardianship system is littered with abuse cases involving such issues as chemical restraint, insufficient medical justification for guardianship, and breach of fiduciary duty as manifested in the guardian's overall conduct concerning the "incapacitated person" which will be discussed in the following paragraphs.

Chemical Restraints

Cases addressing the abuse of chemical restraints go back to at least 1970. In one such case, institutional clinicians were enjoined "from forcibly medicating committed…patients except in emergency circumstances, and ordered [to adhere to] strict compliance with laws prohibiting the use of seclusion for treatment."[xcii] The court held that Mass. Law Ann. ch. 123, §25, which states that an institutionalized patient has the right to receive "treatment suited to his needs which shall be administered skillfully, safely, and humanely with full respect to his dignity and personal integrity,"[xciii] created a presumption that a committed person was presumed competent, including competency regarding his ability to make medical decisions and that said patients had a right to refuse medication in non-emergency situations.[xciv]

The Massachusetts court in Mills et al. v. Rogers et al. stated that said patients "had a protected liberty interest in deciding for himself whether to submit to the use of antipsychotic drugs,"[xcv] which have a significant risk of adverse, irreversible side effects.[xcvi] The District Court stated that this liberty interest could only be overcome by "an overwhelming State interest."[xcvii] The state created liberty interest, exceeding the minimum requirements of the Fourteenth Amendment, derived from the "inherent power of the court to prevent mistakes or abuses by guardians, whose authority comes from the Commonwealth,"[xcviii] and the "common law" right of individuals to determine what will be done with their bodies.[xcix]

The U.S. Supreme Court held that the 14th Amendment due process rights "may depend in part on the substantive liberty interests created by state as well as federal law."[c] The case was remanded to determine the state law rights.[ci]

It is a sad commentary that patients in Massachusetts were being abused by the state Dept. of Mental Health, as well as in nursing homes, and other noninstutionalized settings; and this still presents as a problem in some situations.[cii] In Roe, the court held that a non-institutionalized, incapacitated individual had a protected liberty interest to decide for himself whether to take antipsychotic medications.[ciii] However, should "an overwhelming State interest" materialize, the state's intrusion upon a person would be allegedly for public safety and not to implement substituted judgment nor to administer treatment.[civ] The antipsychotic medication so given would function as "chemical restraints forcibly imposed upon an unwilling individual"[cv] with such an infringement at least equal to involuntary commitment.[cvi]

In a class action pertaining to the aforementioned situation, the Supreme Judicial Court of Massachusetts indicated that "even if [a patient] lacked the capacity to make his treatment decisions at the time, his expressed preference must be treated as a critical factor in the determination of his 'best interests,' since it is the patient's true desire that the court must ascertain."[cvii] In Rodgers, the court found that in non-emergencies there was no state interest sufficient to overcome an incapacitated person's decision to refuse antipsychotic medications.[cviii]

Furthermore, the court stated that prior to forcibly medicating someone, competency and substituted judgment findings were needed; however, no medical expertise is required to make such a determination.[cix] Moreover, if continued use of such medication were requested, a court order and "substituted judgment treatment plan" would be necessary.[cx] Here, the nine questions certified by the First Circuit to the Massachusetts Judicial Court were addressed.[cxi]

In the U.S. Court of Appeals decision regarding Rodgers v. Okin, the court stated that the "state supreme court's declaration which recognized plaintiff's substantive and procedural rights created a liberty interest protected by the Fourteenth Amendment."[cxii] Antipsychotic medication used as a chemical restraint must comply with Mass. Code Regs. Tit. 104, §3.12, and Mass. Gen. Laws Ann. Ch. 123, § 21,[cxiii] which states in part that no chemical restraint may be used without advanced written authorization…[cxiv]

Though the Rodgers cases pertained to institutionalized individuals, the Massachusetts courts are regularly issuing "Rodgers Orders" directed against non-institutionalized individuals.[cxv]The Rodgers case, intended to set a high bar before forced medication can be given, has "become a vehicle for assembly line involuntary psychiatric drugging orders,"[cxvi] because in part, of a lack of adequate representation for the incapacitated person in combination with a judicial system that allows dishonest testimony "purposely distort[ed]… to achieve desired ends,"[cxvii] and subverted statutory and case law standards, and raises insurmountable barriers "to insure that the allegedly 'therapeutically correct' social end is met."[cxviii] Often such harmful medications are used as a threat against incapacitated individuals.[cxix]

These aforementioned alleged safeguards notwithstanding, chemical restraint cases continued. In the Guardianship of Linda, the Supreme Judicial Court of Massachusetts "limited the guardian's authority to administer [antipsychotic drugs] on the ward's voluntary acceptance thereof."[cxx]

In the Guardianship of Edward B. Weedon, the Middlesex Probate Court refused to act on the ward's motion requesting revocation of a substituted judgment order which authorized forcible administration of antipsychotic drugs.[cxxi] On appeal the Massachusetts Supreme Judicial Court remanded the case to Middlesex Probate Court for correction allowing the ward's motion. This court disapproved treatment orders, issued pursuant to G.L. c. 201 §6, which lacked a termination date and provisions for periodic reviews, and which were based on conjecture regarding future circumstances concerning the patient.[cxxii]

Side effects of antipsychotic drugs "are frequently devastating and often irreversible,"[cxxiii] thus individuals have "the right to refuse to submit to invasive and potentially harmful medical treatment such as the administration of antipsychotic drugs."[cxxiv] This right applies to competent as well as incompetent individuals "because the value of human dignity extends to both."[cxxv]

Insufficient Medical Justification for Guardianship

Cases addressing the abuse of placing someone under guardianship without proof of such need go back to at least 1827 when there was no medical documentation or adjudication regarding non compos, no guardianship decree, or record of notice to the person of interest.[cxxvi] There, the court declared the guardianship void.[cxxvii]

The courts over time expanded the function of guardianship beyond merely financial to personal protection; but, it wasn't until 1956 that a nexus between a person's disability and their incapacity was required by the courts.[cxxviii] That requirement was first interpreted in Fazio v. Fazio.[cxxix] Said case marks the beginning of significant changes in guardianship law in Massachusetts over the next several decades.[cxxx] There the court delineated the legal standard for guardianship. The petitioner had to prove that a person was mentally incapacitated and that his "inability to think or act for himself as to matters concerning his personal health, safety, and general welfare, or to make informed decisions as to his property of financial interests,"[cxxxi] was directly related to his mental incapacity.[cxxxii]

In New England Merchants National Bank v. John W. Spillane, the Massachusetts Probate Court appointed a guardian where no one had petitioned for the attorney's appointment and there was no evidence presented concerning his suitability. The Massachusetts Court of Appeals found that this appointment was an error.[cxxxiii] Here, the judge acted on his own motion, allegedly under G.L c. 201 § 14 to appoint a temporary guardian, but failed to met the statute's procedural requirements – e.g., finding that the proposed ward's welfare requires immediate appointment of a guardian, and that the proposed ward was incapable of handling her own affairs due to mental illness.[cxxxiv] The medical certificate referenced "mental weakness" which is not sufficient under G.L. c. 201 § 14 to warrant the appointment of a temporary guardian.[cxxxv] The record contained no information regarding an emergency situation or the suitability of the temporary guardian.[cxxxvi] Said guardian exceeded his authorization pursuant to the court order; and the actions taken by the Worcester Probate Court were vacated on Appeal.[cxxxvii]

In William L. Lane v. Sandra Fiasconaro, "[t]he only opinion on competence in the district court's findings was that of a physician who believed that the patient was mentally ill, but competent."[cxxxviii] Here, the court was authorizing electroconvulsive therapy (ECT) without a Section 8 B (G.L c. 123, § 8 B) determination where a "distinct adjudication of incapacity to make treatment decisions (incompetence) must precede any determination to override patients' rights to make their own treatment decision."[cxxxix] The patient requested a second medical opinion resulting in the doctor finding that she improved with medication; that she was competent and presented no immediate danger to herself; and that ECT was "overkill."[cxl] Thus, the court order authorizing ECT pursuant to G.L. c. 123, §8B was reversed and vacated.[cxli]

Massachusetts statutory law contains no single test of competency, but case law contains helpful guides:

- Fazio v. Fazio[cxlii] - neither a finding of mental retardation or mental illness nor institutionalization is enough for a finding of legal incompetency.
- Lane v. Candura[cxliii] - not acting rationally in one's own best interest, alone is not enough to establish incompetence.
- Guardianship of Bassett[cxliv] - one may be competent for one purpose, but not for another.
- Superintendent of Belchertown State School v. Saikewicz[cxlv] - a person with severe mental retardation,
- Matter of Dinnerstein[cxlvi]- senility, or
- Brophy v. N.E. Sinai Hospital, Inc.[cxlvii] – unconsciousness, coma, or persistent vegetative state may be incompetent.

It appears that the legislature and the Massachusetts courts are leaning toward analyzing competency as a functional assessment of a person's ability to understand information conveyed, to evaluate options, and to communicate a decision.[cxlviii]

In the Guardianship of Jane Doe, the order by the Massachusetts Probate Court appointing the ward's father "temporary guardian with the authority to treat and commit the ward to a mental health facility" was executed based solely on a medical certificate provided by her previous clinician and her mother's affidavit.[cxlix] The ward received no notice of the hearing. Another hearing was held on March 15, but was continued due to scheduling problems. However, the judge granted a petition for temporary guardianship on March 15th and permanent guardianship on April 8th nunc pro tunc to March 15th. On April 26th the two orders were revoked and a de novo hearing ordered, which was continued until no later than June 24th. Then a hearing was held on June 20th and June 21st resulting in a temporary guardianship order extended until a decision could be rendered. A permanent guardianship order was issued on August 17th with the right to commit and the right to authorize the administration of Prolixin.[cl] On appeal, the court stated that the orders of temporary and permanent guardianships were not issued pursuant to Mass. Gen. Laws ch. 201, §§ 7, 14 (i.e., there was no notice, and § 14 is not a substitute for G.L. c. 123, § 12 procedures for civil commitment) and thus were invalid.[cli]

The aforementioned cases involve the Massachusetts courts engaging in a substituted judgment doctrine, a legal fiction,[clii] which easily leads to a judge imposing rather than substituting judgment;[cliii] and after the decision in the Guardianship of Brandon,[cliv] where the court ignored underlying evidence of a significant change in the ward's circumstances, implementations of the probate review process "indicate a tendency toward unconsidered, rubber-stamp approval of severe medical treatments,"[clv] replacing a substituted judgment

standard with an undefined substantial change in circumstances standard.[clvi] This lack of guidance has left the application of the substantial change in circumstances standard to the individual trier of fact to establish his own criterion with no protection from individual bias.[clvii]

Right to Retain Counsel

In addition to the issues discussed above, there are four other issues that impact guardianship in Massachusetts. Allegedly "[t]he order of guardianship did not deprive the ward of the ability to retain counsel in the future if the guardian faced a conflict with the ward;"[clviii] however, the statute allowing such appointment did not go into effect until April, 2009 for non-indigent individuals,[clix] which negatively impacted non-indigent, non-institutionalized persons in their pursuit of ridding themselves of unwanted, unsuitable guardians.

Compliance/Non-Compliance with SJC Rules

Concerning the Rules of the Supreme Judicial Court,[clx] its goal is to ensure that its fee generating court appointments are fair and impartial; that there is compliance with its rules; that certain data is collected; that a guardian does not make payments to herself without court approval; that guardian removal procedures are implemented as needed, etc. [clxi]See In the Matter of the Trusts Under the Will of Lotta M. Crabtree, where such rules as SJC Rule 1:07 (7) were violated by trustees paying themselves large fees, resulting in the appointment of a guardian ad litem.[clxii]

Court's Obligation to Ascertain Ward's Wishes

In the Guardianship of Zaltman,[clxiii] two social workers at Massachusetts General Hospital filed a petition for permanent guardianship; and the only medical evidence submitted at the hearing was an affidavit by Dr. Cullinane. The probate court appointed a permanent guardian. However, "[n]either the substituted judgment order nor the treatment plan order provided for periodic review of Ms. Zaltman's circumstances."[clxiv] Furthermore, the probate court granted the motion to strike the appearance of counsel representing Ms. Zaltman.

Ms. Zaltman filed a petition to discharge the guardian based on lack of proper care and the determination that she no longer needed a guardian.[clxv] Ms. Zaltman's attorney (Laura Sanford) filed a motion for reconsideration in reference to the motion to strike her appearance for the following reasons: the guardian failed to see that Ms. Zaltman received proper care; the guardian failed to take any further action regarding Ms. Zaltman's wishes to terminate the guardianship; the probate court failed to address issues scheduled for the 8/17/05 hearing, and failed to give Ms. Sanford notice of the motion to strike and a hearing date for said motion.[clxvi] Then the probate court denied Ms. Sanford's motion for reconsideration "without findings, a hearing, or an opposition.[clxvii]

On appeal, the appellate court found that the probate court had denied Ms. Zaltman's "right to petition for removal of the guardianship, a right explicitly provided for and protected by statute [G.L. c. 210, § 13];"[clxviii] and that the probate court judge abrogated his obligation to personally ascertain Ms. Zaltman's wishes. "An individual's stated preference has traditionally been considered a 'critical factor' by courts in determining matters of guardianship."[clxix] Furthermore, the denial of an evidentiary hearing violated Ms. Zaltman's rights under Mass. Cons. Decl. Rights art. I.[clxx]

An Additional concern is raised by the actions of Dr. Cullinane who then supported Ms. Sanford's efforts to remove the guardian and generated an affidavit attesting that Ms. Zaltman was now competent and rational.[clxxi] Dr. Cullinane's association with Massachusetts General Hospital (MGH) is not mentioned; however, if Dr. Cullinane was an employee of MGH, then there was perhaps a conflict of interest regarding PrimeCare/Ms. Wooldridge as MGH owns PrimeCare and Ms. Wooldridge's conduct concerning Ms. Zaltman came into question.[clxxii]

The appellate court reversed the decision of the probate court and remanded the case for an evidentiary hearing on the issues presented.[clxxiii] It is the interests of the ward that must be served. "Neither the convenience of the State nor the interests of [guardians] are material to the ultimate decision to be made."[clxxiv]

Court's Obligation to Oversee Guardians and Prevent Egregious Conduct

Regarding egregious conduct and outrageous fees by lawyer guardians, the case of In re Guardianship of Kenneth E. Simon[clxxv] epitomizes guardianship abuse in Massachusetts. "These two lawyers were motivated by greed and had no problem engaging in bullying tactics aimed at dissuading [Simon's] wife from retaining counsel…"[clxxvi] These lawyers used "the legal process to intimidate anyone who got in the way of their agenda…[and] were far less concerned with the ward and his health than they were with getting rid of [his wife] and the ward's money."[clxxvii]

According to Judge Steinberg, the goals of these two lawyers were to spend "every last dime" until Simon's assets were no longer under their control; to make "litigation unnecessarily hostile, which increased fees; [clxxviii]"to remove Mrs. Simon from the picture; and to increase their hourly rate because "[they] figured [they] could get away with it" and "the estate could afford it."[clxxix]

In their efforts to remove Mrs. Simon, these lawyers tried to have her arrested and thrown in jail; then they tried to "blackmail or bribe [her] lawyer into abandoning a defense that is in the best interest of the client…" "They're telling a lawyer, in essence, that they're willing to pay him for no work if they agree to settle…"[clxxx] These lawyers were able to pay themselves $500,000 in fees, yet were unable to pay the nursing home where Mr. Simon was receiving care.[clxxxi] In this case, these lawyers were ordered to repay more than $328,000 to the Simon estate.[clxxxii]

Such professional misconduct "is against society as a whole (see Matthew Cobb, 445 Mass. 452)," and weakens public confidence in a judicial system that is failing and decaying at virtually every level.

Thirdly, the Boston Globe has documented the shortfalls of the Massachusetts Probate Court system.

As of January, 2009, elder abuse in Massachusetts is up by 20 percent, and budget cuts are affecting protective service agencies.[clxxxiii] In the year ending 2009, there were approximately 16,000 reports of elder abuse or neglect investigated by case workers in Massachusetts for individuals 60 years of age and older, living in private homes or apartments.[clxxxiv] Massachusetts agencies in charge of investigating elder abuse complaints are "all running fairly high deficits in that program" and have to prioritize.[clxxxv] Thus, some cases fall through the cracks, especially, if there is a guardian who is allegedly caring for an individual.[clxxxvi] Then, often these agencies defer to a guardian with little if any inquiry.[clxxxvii]

In 2008, the Boston Globe ran an investigative article concerning guardianship and associated abuses in Massachusetts.[clxxxviii] It cited that the most pronounced system flaws were in Middlesex, Suffolk, and Worcester counties.[clxxxix] System failures include the following:

(1) "wholesale indifference to court rules requiring guardians to file an inventory of a ward's assets within 90 days, as well as an annual financial accounting;"[cxc] no filing at all in 262 cases out of 308 cases reviewed in Suffolk Probate Court;[cxci]

(2) "fast-track[ing] elderly into [guardianship] with little evidence to justify such wrenching decisions"[cxcii] - e.g., Dawn Cromwell. "The Cromwell case typifies an everyday practice in Massachusetts probate courts. Too many judges, as Merrill…, award custody of elders to guardians without insisting on the minimal medical documentation required by court rules; without asking about the patient's long term prognosis; and without considering whether an independent fact-finder should conduct an inquiry before such a life-altering judgment is rendered. And those whose lives are so radically affected are given no legal representation;"[cxciii]

(3) limited oversight of guardians, many of whom are lawyers and social workers; said guardians are "virtually unregulated;" and ignore court rules, filing requirements, and the needs of the "incapacitated" person;[cxciv]

(4) "judges who rubber stamp [guardianship] cases just to clear the docket" – statement given by Laura A. Sanford, elder law attorney;[cxcv]

(5) denial of due process rights – e.g., lack of proper notice and the ability to be heard, and failure to appoint counsel;[cxcvi] and

(6) failure to prevent administration of an antipsychotic drug used as a chemical restraint.[cxcvii] The aforementioned problems were also cited in Massachusetts Lawyers Weekly.[cxcviii]

Again, I reiterate that such professional misconduct "is against society as a whole (see Matthew Cobb, 445 Mass. 452)," and weakens public confidence in a judicial system that is failing and decaying at virtually every level.

ARGUMENT III

THERE HAS BEEN AND CONTINUES TO BE SUBSTANTIAL INJURY AND SUFFERING TO INDIVIDUALS VICTIMIZED BY THIS SYSTEM

The Simon and Zaltman cases have close parallels to the Eklund case where the guardian ignored SJC Rule 1:07 (7) paying herself every month without court approval; engaged in accounting irregularities; ignored the ward's wishes on every level; ignored the ward's request to remove the guardian; violated such constitutional rights as notice and the right to attend hearings; left the ward without funds for medication and clothing; failed to remove less than adequate caregivers; failed to repair leaks from around the chimney into the living room and failed to address other home maintenance issues; removed the ward from her home and forced her to travel twice a week for 1 ½ months in the winter between non-ergonomically suited lodging in Tyngsboro and Woburn causing her sever emotional distress which exacerbated her heart conditions, and put her at risk by placing her in a home with an individual who was on medication for depression and who was mandated to undergo counseling for child abuse; authorized a chemical restraint because Mrs. Eklund was distraught at being removed from her home and then placing Mrs. Eklund back into her home 1 ½ months later because the chemical restraint did not work and her cardiac issues were difficult to regulate; threatened family members who objected to the guardian's "care" of Mrs. Eklund; filed baseless contempt charges against these family members; engaged in unnecessary court actions to increase fees; used PrimeCare as a liaison to protect herself from liability; and depleted estate assets to the extent that Mrs. Eklund was forced to stay in rehabilitation facilities from December, 2009 until her death in March , 2010. During said stay, Mrs. Eklund lost more than 20 pounds and succumbed to a systemic infection that was less than adequately addressed in two of the three facilities.

Mrs. Eklund's guardian was always threatening to throw her into a nursing home and file a Medicaid application. Once the liquid assets were depleted, the guardian started to liquidate real property. The guardian's goal from the beginning, as stated to Mrs. Eklund's daughter, was

to pay herself every month and see that Mrs. Eklund learned to live without family and friends. Said guardian also documented that her goal was to see that there was no money left for heirs. This guardian's conduct parallels that of the lawyers In re Guardianship of Kenneth E. Simon, Lawyers Weekly No. 15-001-10 – i.e., she used "the legal process to intimidate anyone who got in the way of [her] agenda…[and was] far less concerned with the ward and [her] health than [she was] with getting rid of [family who objected to her conduct] and the ward's money." "[She apparently] figured [she] could get away with it" and that "the estate could afford it."

Approximately two weeks prior to Mrs. Eklund's death, this so-called guardian told a clinician at Newton-Wellesley Hospital that she did not appreciate how ill Mrs. Eklund was until that conversation with that clinician. Mrs. Eklund paid the price for the failed Middlesex Probate court system.

Had state legislation establishing multidisciplinary teams with District Attorneys to investigate elder abuse been in place, then perhaps there would have been somewhere to seek help. There was, however, no assistance provided by any state agency mandated to assist the elderly.

When violations of SJC Rule 1:07 in the Eklund case were presented to the Judge with said oversight, there was no response. When state agencies were contacted about other abuses in the Eklund case, these agencies deferred to the guardian. The Middlesex Probate court in 2009 did not appreciate that it was required to appoint counsel on behalf of Mrs. Eklund when said counsel was requested, requiring repeated attempts to deal with ill informed probate clerks. Mrs. Eklund was subjected to a guardian who went to court to argue to increase the dosage of a chemical restraint, which was counter indicated based on cardiovascular parameters, by stating to the judge that she and her hired physician had conducted drug experimentation on Mrs. Eklund while she was in a rehabilitation facility without the apparent knowledge of her attending clinician. When said attending clinician was queried about the guardian's drug experimentation, the attending physician emphatically stated that that rehabilitation facility did not engage in experimentation on patients and that she, as the attending, was the only person who determined medication and the respective doses. Only in this instance did the judge have pause concerning the guardian's request. The dose increase was denied; and furthermore, the guardian's current dosage was not adhered to because medical parameters dictated otherwise.

Mrs. Eklund was forced to stay in a rehabilitation facility against her will and waste away because allegedly there was no money for her to return home while the guardian cashed an annuity in December, 2009 for apparently reasons other than the benefit of Mrs. Eklund.

CONCLUSION

England's King Edward III stripped the ecclesiastical courts of its power to directly administer estates due to clergy converting decedents' estates for their own purposes.[cxcix] Today, the probate courts, the U.S. equivalent of ecclesiastical courts, allow guardians/lawyers to pillage a decedent's assets in a manner similar to ecclesiastical practice in pre-fourteenth century England.[cc] To add insult to injury, litigants are denied important federal rights when courts claim a probate exception to probate-related suits filed under RICO or other federal statutes or filed regarding in personam claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, fraudulent concealment, fraudulent misrepresentation, etc.[cci] or wrongful death claims.[ccii]

In the Eklund case, scrutiny should have been applied to the violation of constitutionally guaranteed substantive and procedural due process deprivations of which a reasonable person in the former guardians' positions, as lawyer and fiduciaries, should know. Depriving a vulnerable adult of liberty and property interests demands heightened inquiry of the offending actors' conduct. [cciii]

These former guardians, who were in a position of trust and owed a direct fiduciary duty to the one who was stripped of her constitutional rights either through such questionable standards as substituted judgment or a substantial change in circumstances, used the probate proceedings merely as a back-drop against which to perpetrate such conduct as breach of fiduciary duty, violation of SJC Rule 1:07, reckless/negligent oversight of care given to their "ward," infliction of emotional and physical distress on their "ward," and violation of the Rodgers cases – using said cases as "a vehicle for assembly line involuntary psychiatric drugging orders" against a non-institutionalized individual who had the right to refuse to submit to invasive and potentially harmful medical treatment whether she was competent or incompetent.[cciv]

Concealment of excessive billing, laying waste to the ward's home, false imprisonment with the aid of involuntary psychiatric drugging orders and breach of fiduciary duty, questionable transfer of assets among other conduct delineated in all filed documents including complaints, amended complaints, petitions, accountings, and attachments in derogation of the ward's intent are all actionable under a variety of legislative remedial statutes and common law to be applied broadly and interpreted expansively (42 U.S.C. § 1983 civil Rights/Due Process XIV Amendment; RICO; Americans with Disabilities Act, etc.).

As previously stated, any use of an alleged exclusive "probate jurisdiction" over federal remedial legislation lacks legislative or legal support; and the "probate exception" cannot divest a federal or concurrent state court of jurisdiction to hear such actions sounding in breach of fiduciary duty or malfeasance by a lawyer and/or guardian.

The "ward's" designation as a "vulnerable adult" remained uncontested at the time of deprivation. Her liquid assets were virtually depleted, real estate was sold, and she was forced to remain in rehabilitation facilities while the former guardian was threatening to file a Medicaid application. Said former guardian acted repeatedly in said fashion with her selected group of colleagues.[ccv]

Each complaint and amended complaint explained how said fiduciaries and their cohorts, either directly or indirectly, subjected the "ward" to exploitation and abuse.

Probated statutes, rules, and procedures relative to the ward's guardians, fiduciaries and lawyers acquiring her (the protected person) assets, cash, home, real property, pensions, marketable (or unmarketable) securities, social security checks, and retirement benefits and converting said assets to their own accounts without Court authorization (e.g., violation of SJC Rule 1:07) or oversight, without hearing or notice until months or years post-deprivation are bereft of a constitutional lineage as a "probate exemption" to the Due Process and Equal Protection clauses.

Here, said guardian and lawyer extorted compliance of the "ward" and family members objecting to their conduct by threatening, intimidating, and abusing process by carrying out in the face of non-compliance a scheme to improperly protract the ward's false imprisonment, subject the ward to emotional and physical distress, engage in vexatious litigation/abuse of process/malicious prosecution while engaged in unfettered liquidation of assets up until the moment of Mrs. Eklund's death..

Based on concealment of financial information/accounting irregularities, violation of SJC Rule 1:07, excessive billing (as verified by a third party review) and the aforementioned limitations and questionable conduct of the Probate Court, a jury trial was requested to address all of the delineated issues, which according to the ruling in Wisecarver,[ccvi] are removed from the "limited scope of the probate exception" because "the removal of [those] assets from [Mrs. Eklund's] estate was during [her] lifetime;"[ccvii] and thus the complaint contained prayer for relief that did not fall within the limited probate exception.[ccviii]

Also, as Congress has indicated, exploitation of disabled individuals should "invoke the sweep of congressional authority including the power to enforce the 14th Amendment … in order to address major areas of discrimination faced by people with disabilities," (§ 12102, ADA), including disabled individuals under guardianship. Mrs. Eklund should not have been stripped of her constitutional rights and subjected to such abhorrent conduct by an individual who was allegedly in place to act in her best interest and only for her benefit and not to financially profit at Mrs. Eklund's expense.

In the Eklund case, the Middlesex probate court denied substantive and procedural due process and equal protection rights, and its decisions violated the Taking Clause.[ccix]

If the Massachusetts SJC and OCAJ will not finally designate someone who "is accountable to manage the Trial Court as a whole;" stop avoiding difficult administrative decisions; stop allowing this dysfunctional system to destroy lives and contribute to the untimely death of individuals forced into and ensnared by this system; start holding its courts and justices accountable for the organizational and administrative failures; and stop acting as bystanders allowing these travesties to continue,[ccx] then Congress must consider enacting a statutory override of the probate exception.

However, to date state and federal entities have failed to act and lives have been lost. Thus the Petitioner requests that the applicable Human Rights organization(s) proceed to hold "guardians" who have engaged in inflicting pain and suffering upon vulnerable individuals, taking assets, and violating these individuals' rights under the Fifth, Eighth, and/or Fourteenth amendments of the US Constitution and the UN Universal Declaration of Human Rights and all applicable Charter Articles, accountable along with complicit state and federal agencies for said acts and ensure that these offenses are treated as criminal offenses.

Kindly issue a report that will require the offending States to: suspend the activities in violation of human rights; investigate and punish responsible persons/entities; make changes to legislation; require the offending States to adopt other necessary measures; and require responsible persons/entities to make reparations for damages caused.

[i] Sigurjonsson v. Ireland, Application No. 16130/90, Eur. Comm. H.R., decision of July 10, 1991, 12 Hum Rts L. J. 402 (1991).
[ii] See Akdivar v. Turkey, Judgment of September 16, 1996, Reports 1996-IV, 1210-11; Selcuk and Asker v. Turkey, 24 April 1998, Reports 1998-II 891; Aksoy v. Turkey, Reports 1996-VI, 2260, para. 53(1997).
[iii] Waldock, "Human Rights in Contemporary International Law and Significance of the European Convention," in the European Convention of Human Rights 1, at 14 (Int'l & Comp. L. Supp. Publ. No. 11, 1965).
[iv] Exec. Order No. 13107, 63 FR 68991 (Dec. 10, 1998), at § 1(a).
[v] Article 20, J.H. Burgers & H. Danelius, The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1988); Article 1(1); Article 49(1).
[vi] Guardians of the Elderly, An ailing System, Special Report 4, Associated Press, 1987.
[vii] See supra note vi; Fields, Larrubia & Leonard, Guardians for Profit When a Family Matter Turns into a Business, LA Times, 11/13/05.
[viii] A. Franks Johns, Charles P. Sabatino, Wingspan- The Second National Guardianship Conference: Introduction, 31 Stetson L. Rev. 573 (2002).
[ix] Robert D. Fleischner, Guardianship, Extraordinary Treatment and Substituted Judgment (2000).
[x] See supra note vi; Kelly, Kowalski & Novak, Courts Strip Elders of Their Independence, Boston Globe, 1/13/08; Massachusetts Probate & Family Court Explains New Medical Certificate Form, Massachusetts Lawyers Weekly, 4/7/08.
[xi] See supra note vi.
[xii] See supra note ix; Guardianship of Zaltman, 65 Mass. App. Ct. 678 (2006); see supra note vi.
[xiii] See supra note vi.
[xiv] Id.
[xv] Id.
[xvi] T. Tatara, L. M. Kuzmeskus, Types of Elder Abuse in Domestic Settings, National Center on Elder Abuse (Mar. 1999).
[xvii] Id.
[xviii] Id.
[xix] Martha Ridgway, Civil, Criminal and Administration Remedies in Cases of Abuse, Neglect, and Financial Exploitation of the Elderly, Colorado Gerontological Society & Senior Answers & Services (2010).
[xx] Elder Abuse, The National Center for Victims of Crime (2008)
[xxi] See supra note xix.
[xxii] See supra note xvi; the following updated information was provided by the National Center on Elder Abuse (2006): neglect: 20%, physical abuse: 11%, financial exploitation: 15%, emotional abuse: 15%, sexual abuse: 1%.
[xxiii] See supra note xvi; the National Center for Elder Abuse (2006) cited an updated value of 16%
[xxiv] Id.
[xxv]Data and Statistics, Elder Abuse, Elder Abuse Daily, 2/15/10.
[xxvi]Id.
[xxvii]Barry Yeoman, Stolen Lives, AARP: The Magazine (Jan.-Feb. 2004).
[xxviii]See supra note vi.
[xxix]Id.
[xxx]Id.
[xxxi]Id.; Robin Fields, Evelyn Larrubia, see supra note vii; U.S. GAO Report, Guardianship, Cases of Financial Exploitation, Neglect, and Abuse of Seniors, Sept. 2010; H.R. 3040, serial No. 111-137, May 25, 2010.
[xxxii]see supra note vii re: Fields, Larrubia & Leonard.
[xxxiii]Id.; see supra note xxx.
[xxxiv]Id.
[xxxv]Id.
[xxxvi]Guardians for Profit, For Most Vulnerable, a Promise Abandoned, LA Times, Nov. 16, 2005.
[xxxvii]Id.

[xxxviii] Id.
[xxxix] Commentary: Guardianship Reform is Overdue, Massachusetts Lawyers Weekly, 1/21/08.
[xl] Eleanor M. Crosby and Rose Nathan, Adult Guardianship in Georgia: Are the Rights of Proposed Wards Being Protected? Can We Tell? 16 Quinn. Prob. Law Jour. 249, 250 (2003).
[xli] Guardians of the Elderly, An Ailing System, Special Report 4, Associated Press, 1987.
[xlii] Id.
[xliii] Commission on Mentally Disabled and Commission on Legal Problems of the Elderly, Guardianship: An Agenda for Reform - Recommendations of the National Guardianship Symposium and Policy of the American Bar Association, 12 A.B.A. 1989 [Wingspread Recommendations].
[xliv] Uniform Guardianship and Protective Procedures Act (UGPPA), 8A U.L.A. 137 (Supp. 2001).
[xlv] Symposium, Wingspan- The Second National Guardianship Conference, 31 Stetson L. Rev. 573 (2002).
[xlvi] Marshall B. Kapp, Reforming Guardianship Reform: Reflections on Disagreements, Deficits, and Responsibilities, 31 Stetson L. Rev. 1047, 1050 (2002).
[xlvii] Guardianship for the Elderly: Protecting the Rights and Welfare of Seniors with Reduced Capacity, U.S. Senate Special Committee on Aging (2007).
[xlviii] Haines & Campbell, Defects, Due Process, and Protective Proceedings: Are Our Probate Codes Unconstitutional,? 14 Quinn. Prob. Law Jour. 57 (1999).
[xlix] Commentary: Guardianship Reform Under UPC Nearly Here, Massachusetts Lawyers Weekly, 6/22/2009.
[l] Susan G. Haines, John J. Campbell, Defects, Due Process, and Protective Proceedings: Are Our Probate Codes Unconstitutional,? 14 Quinn. Prob. Law Jour. 57, 60 (1999).
[li] Mathew v. Eldridge, 424 U.S. 319, 332 (1975).
[lii] National Study of Guardianship Systems, Center for Social Gerontology, 1994.
[liii] Eleanor M. Crosby and Rose Nathan, Adult Guardianship in Georgia: Are the Rights of Proposed Wards Being Protected? Can We Tell," 16 Quinn. Prob. Law Jour. 249, 250 (2003).
[liv] In Guardianship of the Elderly, An Ailing System, Special Report 4, supra note vi.
[lv] Commentary: Guardianship Reform is Overdue, Massachusetts Lawyers Weekly, 1/21/08; Commentary: Uniform Probate Code, at Last, Massachusetts Lawyers Weekly, 3/30/09.
[lvi] Joan O'Sullivan, Role of the Attorney for the Alleged Incapacitated Person, 31 Stetson L. Rev. 687 (2002).
[lvii] See supra note vi; Abuses in Guardianship of the Elderly and Infirm: A National Disgrace, H.R. Comm. Print 100-639 (Dec. 1987).
[lviii] U.S. GAO Report, Guardianships, Cases of Financial Exploitation, Neglect, and Abuse of Seniors, Sept. 2010.
[lix] Id.
[lx] Id.
[lxi] Id.
[lxii] Id.
[lxiii] Id.; see GAO-06-1086T and GAO-04-655.
[lxiv] Id.
[lxv] Id.
[lxvi] Id.
[lxvii] Id.
[lxviii] H.R. 3040, Serial No. 111-137, May 25, 2010.
[lxix] Carol D. Leonnig, Lena H. Sun and Sarah Cohen, Misplaced Trust: Special Report, The Washington Post, (Jun 15-16, 2003).
[lxx] Id.
[lxxi] Massachusetts Probate Court Chief Says Some Sessions May Close, Massachusetts Lawyers Weekly, 4/7/2003; At Year End, Court Challenges Continue in Massachusetts, Massachusetts Lawyers Weekly, 12/28/09.
[lxxii] Furious Judges Can Only Punch a Clock, Massachusetts Lawyers Weekly, 12/13/04.
[lxxiii] Id.
[lxxiv] Bar Laments Session Lost at Middlesex Probate & Family Court, Massachusetts Lawyers Weekly, 3/7/05.

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[lxxxviii]Massachusetts Board of Bar Overseers Admonitions: SJC No. BD-2007-066, 10/29/07.
[lxxxix]Massachusetts Board of Bar Overseers Admonitions: SJC No. BD-2007-048.
[xc]Massachusetts Board of Bar Overseers Admonitions: SJC No. BD-2010-067, 9/27/2010.
[xci]Judge: Lawyer's Conduct Was 'Egregious,' Fees 'Outrageous,' Massachusetts Lawyers Weekly, 2/1/10.
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[xciii]M.G.L.A ch. 123, § 25.
[xciv]Id.
[xcv]Mills et al v. Rodgers et al, 457 U.S. 291; 102 S. Ct. 2442; 73 L. Ed. 2d 16, 1982.
[xcvi]Id.
[xcvii]Id.
[xcviii]Guardianship of Roe, 383 Mass. 415, 433; 42 N.E. 2d 40, 51 (1981).
[xcix]See supra note xcv.
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[ci]Id.
[cii]Guardianship of Roe, 383 Mass. 415 (1981); Rodgers v. Commissioner of the Dept of Mental Health, 390 Mass. 489 (1983); see supra note vi; Kelly Kowalski and Novak, Courts Strip Elders of their Independence: Within Minutes, Judges Send Seniors to Supervised Care, Boston Globe, Jan. 13, 2008.
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[civ]Id.
[cv]Id.
[cvi]Id.
[cvii]Rubie Rodgers & others v. Commissioner of Dept of Mental Health & others, 390 Mass. 489; 458 N.E. 2d 308, 1983; Doe v. Doe, 377 Mass. 272, 277-279 (1979).
[cviii]Id.
[cvix]Id.
[cx]Id.
[cxi]Id.
[cxii]Rubie Rodgers, et al...v. Robert Okin, M.D., et al..., U.S. Court of Appeals for the First Circuit, 738 F. 2d 1, 1984.
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[cxiv]Id.

[cxv]James Gottstein, Opposing Forced Drugging (Rodgers Orders), Psychrights Law Project for Psychiatric Rights, Inc., Feb. 1, 2004.
[cxvi]Id.
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[cxviii]Id.
[cxix]Id.
[cxx]Guardianship of Linda, Supreme Judicial Court of Mass., 40 Mass. 783; 519 N.E. 2d 1296, 1988.
[cxxi]Guardianship of Edward B. Weedon, SJC of Mass., 409 Mass. 196; 565 N.E. 2d 432, 1991.
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[cxxiii]Id., citing Guardianship of Roe, 383 Mass. 415, 438 (1981); Rodgers v. Comm. of the Dept of Mental Health, 390 Mass. 489, 501 n. 16 (1983).
[cxxiv]Id., citing Roe, supra note cii at 433.
[cxxv]Id., citing Roe, supra note cii at 499-500; quoting Superintendent of Belchertown State School v. Saikewicz, 373 Mass. 728, 745-746 (1977).
[cxxvi]Isaac Hathaway, in error, v. Joseph Clark 3d, Supreme Court of Mass., Plymouth, 22 Mass. 490, 1827.
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[cxxviii]John Cross, Robert Fleischner, Jinanne Elder, Guardianship and Conservatorship in Massachusetts, 2d Edition (Lexis Law Publishers) (2000).
[cxxix]375 Mass. 951 (1978).
[cxxx]Id.
[cxxxi]Id.
[cxxxii]Id.
[cxxxiii]New England Merchants National Bank v. John W. Spillane, 14 Mass. App. Ct. 685; 442 N.E. 2d 421, 1982.
[cxxxiv]Id.
[cxxxv]Id.
[cxxxvi]Id.
[cxxxvii]Id.
[cxxxviii]William L. Lane v. Sandra Fiasconaro, 1995 Mass. App. Div. 125.
[cxxxix]Id.
[cxl]Id.
[cxli]Id.
[cxlii]375 Mass. 394 (1978).
[cxliii]6 Mass. App. Ct. 377 (1978).
[cxliv]7 Mass. App. Ct. 56 (1979).
[cxlv]373 Mass. 728 (1977).
[cxlvi]6 Mass. App. Ct. 466 (1978).
[cxlvii]398 Mass. 489 (1983).
[cxlviii]See supra note cxxviii.
[cxlix]Guardianship of Jane Doe, 391 Mass. 614; 463 N.E. 2d 339, 1984.
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[clii]Saikewicz, 370 N.E. 2d at 431-32; Louise Harmon, Falling Off the Vine: Legal Fictions and the Doctrine of Substituted Judgment, 100 Yale L. J. 1, 59 (1990).
[cliii]In re Willoughby, 11 Paige Ch. 257, 260-261 (N. Y. Ch. 1844); Jeremy Bentham, Preface Intended for the Second Edition of the Fragment on Government, In Collected Works of Jeremy Bentham 509 (J. H. Burns and H. L. A. Hart, eds 1977 (1823).
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[clv]In re Elly, No. 70P0353-MR Bristol Co. Probate Ct., Sept. 23, 1998); In re Andrew, No. 87P1411-G1 (Bristol Co. Probate Ct., Sept. 17, 1997).

[clvi]See Brandon, supra note cliv at 120; John H. Cross et al, Guardianship and Conservatorship in Mass. 6-23.1 (1997).
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[clix]Guardianship of Dominic F. Grzybowski, 2010 Mass. App. unpub. Lexis 578.
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[clxii]In the Matter of the Trusts Under the Will of Lotta M. Crabtree, 440 Mass. 177; 795 N.E. 2d 1157, 2003.
[clxiii]In the Guardianship of Zaltman, 65 Mass. App. Ct. 678; 843 N.E. 2d 663, 2006.
[clxiv]Id. at 666; see Guardianship of Weedon, 409 Mass. 196, 200-202, 565 N.E. 2d 432 (1991).
[clxv]Id.
[clxvi]Id.
[clxvii]Id.
[clxviii]Id.
[clxix]Id.; Guardianship of Roe, 383 Mass. at 445; see Allis v. Morton, 70 Mass. 63, 4 Gray 63, 64 (1855); Guardianship of Smith, 43 App. Ct. 493, 499, 684 N.E. 2d 613 (1997).
[clxx]Id.
[clxxi]65 Mass. App. Ct. 678, 682.
[clxxii]See supra note clxiii.
[clxxiii]Id.
[clxxiv]In the Matter of Mary Moe, 385 Mass. 555; 432 N.E. 2d 712, 1982.
[clxxv]See Mass. Lawyers Weekly No. 15-001-01, 2/1/2010; and The National Law Journal, 2/4/10.
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[clxxvii]Id.
[clxxviii]Id.
[clxxix]Id.
[clxxx]Id.
[clxxxi]Id.
[clxxxii]Id.
[clxxxiii]Steve Adams, Elder Abuse Complaints on Rise in Massachusetts, The Patriot Ledger (9/4/10).
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[clxxxvi]Id.
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[cxci]Id.
[cxcii]Id.; 373 Mass. 782 (1977).
[cxciii]Id.; see supra note clxxxviii.
[cxciv]Id.
[cxcv]Id.
[cxcvi]Id.
[cxcvii]Id.
[cxcviii]Commentary: Guardianship Reform is Overdue, Massachusetts Lawyers Weekly (1/21/08); Uniform Guardianship and Protective Procedures Act (UGPPA), 8A U.L.A. 137 (Supp. 2001); In Guardianship of Roe, 412 N.E. 2d 40 (Mass. 1981); Mills v. Rodgers, 457 U.S. 291, 102 S. Ct. 2442, 73 L. Ed. 2d 16 (1982).
[cxcix]J. Willaims Holdsworth, A History of English Law 625, 627 (7th ed. 1956).
[cc]Id.

[cci] Lefkowitz v. Bank of New York, 528 F. 3d 102, 104 (2d Cir. 2007).
[ccii] Richard Bryant v. Jamison Turney, 2012 U.S. Dist. LEXIS 138345.
[cciii] S. Eklund, Guardianship Abuse of the Elderly: A Violation of Constitutional Rights Precipitating An Extreme Punitive Civil Penalty 23 (2011).
[cciv] Id.
[ccv] Id.
[ccvi] Wisecarver v. Moore, 489 F. 3d 747, 750-751 (6th Cir. 2007).

[ccvii] Id.
[ccviii] Id.
[ccix] See Williams v. Adkinson, 792 F. Supp. 755, 757 (M.D. Ala. 1992).
[ccx] "Justice Endangered: A Management Study of the Massachusetts Trial Court," Harbridge House, Inc. (1991).

EXHIBITS
PRESENTED AT THE US CAPITOL AND AT STATE VENUES

Testimony of a Victim from Tarrant County, Texas:	four pages
Letter to US Department of Justice, Civil Rights Division:	five pages
Testimony of a Victim's Family from Florida:	eight pages
Testimony of a Victim's Family from New York:	four pages
Testimony of a Victim's Family from the state of Washington:	one page
Testimony of a Victim's Family from Texas:	two pages
Testimony of a Victim's Family from Maryland:	four pages
Testimony of a Victim's Family from the state of Washington:	four pages
Testimony of a Victim's Family from Massachusetts:	two pages