

**Abuse of Power:  
Exploitation of Older Americans  
by Guardians and Others they Trust**

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Chairman Collins, Ranking Member Casey, and Members of the Committee, I am Pamela Teaster, Professor and Director Center for Gerontology at Virginia Tech. I am deeply honored to be here today and grateful for the Committee's focus on the serious and ongoing problem of the exploitation of older Americans committed by guardians and others whom they trust.

To frame my remarks on the abuse of power by those entrusted to protect vulnerable older adults, I draw from the analogy of *Sheep, Wolves and Sheepdogs*, as discussed by Lt. Col. Dave Grossman in his book *On Combat: The Psychology and Physiology of Deadly Conflict in War and in Peace*. To emphasize, there is nothing morally superior about being a sheep or a sheepdog-it is a matter of choice and circumstance.

According to Grossman, most people in our society are decent, kind, productive people incapable of hurting each other except by accident or extreme provocation. I in no way use this analogy to be disrespectful but rather to heighten how vulnerable are people under the power of another. Most are unaware and unsuspecting of their vulnerabilities when their decisional lives are entrusted to a protector acting in the name of beneficence. The protectors, the good guardians, the good agents under powers of attorney, the good representative payees, and all the good friends, families, and agencies acting in this capacity are much like sheepdogs—their job is to protect the individuals for whom they are responsible and confront those who try to take advantage of them. Guardians who act as intentional predators, or wolves, if you may, exploit vulnerable persons without mercy. Some examples from recent press articles are instructive.

An example of a predatory guardian was reported by Judy Reich (02 March 2016). Local 10 News Viewer Claims Guardian Not Acting in Best Interest of Father.

<http://www.local10.com/consumer/call-christina/local-10-news-viewer-claims-guardian-not-acting-in-best-interest-of-father>

In this story, paid professional guardian Elizabeth Savitt, became guardian over the victim after the victim's family could not come to a decision about their father's finances. Mrs. Savitt, a professional guardian, was able to liquidate everything from the victim and charge over \$65,000 in guardianship fees during a six-month period. During this six-month time period, she did not allow the family to see their father at all.

The following is a case of exploitation by another wolf, this time an agent under power of attorney, posted by Lance Hernandez (10 February 2016) of *The Denver Channel*.  
<https://www.thedenverchannel.com/news/local-news/longmont-nurse-accused-of-stealing-elderly-patients-life-savings-contaminating-his-house-with-meth> The Denver.

In this case, occurring in Denver, Colorado, the wolf was registered nurse Shela Wagner, who was taking care of an elderly patient in his home and became agent under power of attorney over the patient. Once appointed as agent under the power of attorney, she was able to transfer money from the elderly victim's account to the accounts of her two sons. While taking care of the elderly victim, she was also making meth inside of his household. The agent under power of attorney often had hallucinations and thought that there were bugs crawling all over the patient's skin and would pick off his skin with tweezers, which lead to skin infections all over his body. In total, it is estimated that she stole \$140,000 in cash and property from the victim, along with using his house to cook meth with her two sons.

There are selfless, wonderful guardians; I would not want any person hearing or reading this testimony to think otherwise. These programs and people are the sheepdogs. They protect and support a precious individual. This story was posted on the website of Guardian Services, Inc., the mission of which is to provide guardianship and supports and services for at-risk adults in Tarrant County, Texas. <http://www.guardianshipservices.org/guardianship/client-profiles>

Shirley was exploited by strangers and drug dealers who took advantage of her confusion. Drug dealers actually moved into her small home. A neighbor, who was hired to clean, stole money and valuables. Shirley gave the neighbor a check for \$50 to purchase groceries; all she received in return was a six-pack of soft drinks. Finally, when \$1,000 disappeared from a savings account, the bank called Adult Protective Services. Shirley was immediately referred to Guardian Services, Inc. Frances was appointed Shirley's volunteer guardian. She arranged for in-home services, obtained a wheelchair, and made Shirley part of her family. Frances and her family celebrated Shirley's 94th birthday at a restaurant and showered her with gifts. When asked if Shirley was her grandmother, Frances would simply agree. Shirley would just beam.

In 2016, the Virginia Public Guardian & Conservator Program was asked to serve as guardian for a patient at a mental health institute and began visiting him to get to know him in anticipation of becoming his guardian. Upon appointment, he was moved to an assisted living facility. The public guardian program employee had monthly visits with the individual and oversaw his medical treatment and benefits. Through working with him, the public guardian realized that he was capable of managing his own affairs and that he should be restored to capacity. The Program secured a new capacity assessment for the individual, including an attorney to bring a restoration of rights proceeding on his behalf. Less than two years after the appointment of the public guardian, a Virginia Circuit Court judge restored the individual to capacity, remarking that it was the first time that she had ever restored an individual to capacity.

In theory and practice, an older adult unable to make decisions for himself or herself should be better off with a guardian or an attorney-in-fact than without one. For example, a guardian should ensure that a protected person has an acceptable place to live, receives proper nutrition, and has appropriate health care. Unfortunately and too frequently, the fate of people under guardianship (i.e., persons with mental illness, dementia, developmental disabilities, or a combination thereof), is poorly monitored in sufficient, meaningful, and diligent ways. This inattention threatens to unperson them, leaving them open to exploitation, abuse, and neglect. The awesome power over highly vulnerable adults wielded by the guardianship system (at its best, the sheepdog) demands adherence to the accountability protections already in place, but that are not well implemented (e.g., assessments, care plans, annual reports, accountings)—their own kind of sheepdog.

There are four kinds of guardians: family or friend guardians, volunteer guardians, paid professional guardians, and public guardians. Family and friend guardians are the most

common; other guardians have a more attenuated relationship to the protected person. Most guardians are also doing their best for the individuals entrusted to them and for whom they serve as surrogate decision makers. However, the subject of this hearing, the motives and practices of a subset of guardians are extremely troubling. Some paid professional and public guardians have ratios of one to over 100 protected persons, a ratio far too high to afford an individualized and appropriate level of protection and care.

In 1987, the Associated Press published its special report, *Guardians of the Elderly: An Ailing System*, which marshalled a team of reporters from all around the country to report on the guardianship system. Reporters documented significant problems with the system itself, citing problems with due process and finding that, tragically, older adults were railroaded into the guardianship system, far too often, for the mere fact that they were old and female. The article was a wake-up call to the states, and a series of laudable statutory reforms were ushered in.

Ironically, exactly thirty years later, the October 9, 2017 article by Rachel Aviv, *The Takeover: Senior Citizens Are Losing Their Assets and Their Autonomy to a Hidden System*, published in *The New York Yorker*, sounded some of the same themes, but this time, with a focus on exploitation and documenting egregious treatment by some paid professional guardians who took advantage of protected persons under their care. Aviv wrote that guardians ignored the needs of protected persons, warehousing them in facilities providing poor care, charging unreasonably high compensation for services that were never rendered or poorly rendered, and isolating them from their families, including not checking on the protected person, not completing required paperwork, refusing family and friend visits to the protected person.

As Professor Kohn at the Syracuse University College of Law noted in her testimony, while there have been excellent legal reforms, there remain perverse system incentives and a lack of information that are at the heart of the problem, these documented in 2017 by Erica Wood and colleagues of the American Bar Association and the General Accountability Office in 2016. The laws in states are generally quite good, and the new Uniform Guardianship, Conservatorship and Other Protective Arrangements Act of July 2017 is excellent.

The problems lie in the implementation of the laws and in whether they create the right systems to encourage the desired behavior. Despite estimates that some 1.5 million adults are under guardianship, in 2018, not one single state in the country can identify its people under guardianship—an incomprehensible situation in the information age—and one that makes it impossible to have an appropriate level of accountability for each person who has a guardian. This means that mechanisms put in place to investigate its appropriateness, to order its establishment, to document its execution, and to facilitate its revocation are impeded by not knowing the very people served.

System reformation can and should take the form of greater clarity and training when persons assume the role of guardian ad litem the eyes and ears of the court, and of guardians themselves; deeper consideration of appropriateness and scope of appointment; bonding; meaningful insertion of person-centeredness and supported decision making; limited orders; reasonable, appropriate, and timely monitoring post establishment; constant consideration of the restoration of rights; and zero tolerance for the pockets of collusion and corruption that exist around the country among actors in the system. The courts should institute restrictions and/or enhanced scrutiny when one guardian has more than 20 protected persons under his or her care (in 2010, one commentator recommended a 1:20 ratio). Left unchecked, these problems open the door for another and equally insidious problem, the topic of our testimony today—exploitation, as well as abuse and neglect by unscrupulous guardians.

Like the persons in the system, we know very little about the scope of guardian abuse, neglect, and exploitation despite inquiry by scholars and government entities alike. If the scope of mistreatment is unknown, strategies for prevention and remedies for intervention will be difficult at best. Notably, a number of states are instituting better computer monitoring (e.g., Florida, Minnesota, Virginia) and are exploring legislation for an improved system of guardianship for persons who are incapacitated but alone (e.g., New York, Massachusetts). These efforts and others, including reform efforts by the National Guardianship Network, the National Guardianship Association, and state-level Working Interdisciplinary Networks of Guardianship Stakeholders/WINGS (American Bar Association, 2014) must go forward and improve practices in all states in the country.

Now is the time for the powerful and important guardianship system, a system that acts in the name of beneficence, nonmaleficence, and justice, and preserves autonomy whenever possible to demand and receive adequate resources. At its worst, as wolf, guardianship undermines and destroys the lives of older adults and their families—for generations. System implementation reforms are prescient and possible. Guardians who abuse, neglect, or exploit older adults should receive enhanced penalties for their crimes. And, again, persons under guardianship should enjoy supported decision making whenever possible and have their rights restored in part or totally with all deliberate speed.

Should we choose to do otherwise, we are no respecter of persons, and we unleash predatory guardians, the wolves, with no mercy on the unsuspecting, on the vulnerable. We negate the actions of the sheepdogs, the good guardians and all other mechanisms in place to bolster them. When the public continues to permit inadequate guardianship services and oversight, we unperson, we disrespect, and we perpetuate a system that remains a backwater, one that remains broken, ailing, and a mess/unconscionable.

Thank you for giving me the opportunity to present this testimony on this day.