

## **Guardianship Roundtable Public Hearing – August 25, 2022**

Hosted by New York Senators George M. Borrello and Anthony H. Palumbo

Written Testimony of Teresa Kay-Aba Kennedy, Ph.D., submitted September 12, 2022

Senator Borrello, Senator Palumbo, distinguished colleagues. My name is Teresa Kay-Aba Kennedy and I am founder of Elder Dignity. Thank you for allowing me to testify in person on August 25, 2022 and submit this written testimony to share more details about my family's ordeal and suggested legislative changes.

I knew nothing about guardianships until my aunt was entrapped for eight years. One attorney called it “the Olympics of guardianship cases” due to the masterful legal manipulation employed. Her case lays out the anatomy of a predatory guardianship, practices that are becoming more common in exploiting seniors.

### **The Case of Dr. Lillie Sykes White**

Imagine you've worked hard all of your life and suddenly you are deemed incapacitated and stripped of your dignity and basic individual rights. You have done nothing wrong but someone you did not choose is given control over your person and property making you a modern-day slave. You may even be taken from your home and hidden away from loved ones while your assets are pillaged. It sounds like Nazi Germany, but this is happening in the United States today. It happened to my aunt, Dr. Lillie Sykes White.

Originally from a small town in North Carolina, Lillie worked all of her life since she was six years old. She achieved the American Dream, marrying her college sweetheart and earning a doctorate. She had a 30-year career as an educator, including Supervisor of Instruction for public schools in Montgomery County, Maryland – one of the early Black leaders in that role. Over twenty years ago, she retired to Palm Coast, Florida with her husband, who was also a respected educator. They saved and invested well, amassing a nearly \$5 million estate. He died in 2003, and in 2006 she created the Lillie S. White Revocable Living Trust, which provided Lillie as sole beneficiary during her lifetime and named her son as contingent beneficiary along with her estranged granddaughter. There was always a question of her paternity but there was never a DNA test.

#### A: Instigation *(someone instigates the guardianship innocently or with bad intent)*

In January 2012, at 83 years old, Lillie was independently enjoying her retirement – shopping, cooking and driving the sports Mercedes her late husband gave her. She had just celebrated Christmas with her younger sister Janie Sykes-Kennedy and her family who had come in from New York. Lillie appeared healthy and happy. She had full mental capacity and a big loving family with almost fifty nieces and nephews including grands and great grands. Lillie was proud to be the matriarch. Within weeks, a family friend and estranged granddaughter started a process that would change Lillie's life forever. The friend invited Lillie to visit his home in Winter Garden, Florida. Before leaving, Lillie wanted to get her blood pressure medicine and the friend accompanied her to the doctor. Without Lillie knowing, the friend got a two-line note from the doctor stating that Lillie “is no longer mentally and physically capable of determining her medical and financial needs. She is mentally incompetent.” The doctor also gave the friend the name of a guardianship attorney.

#### B: Isolation *(senior is isolated and often medicated in a home or facility)*

The friend took Lillie's cell phone and keys and began to control every aspect of her existence. He changed her address so her mail came to him. Her visit turned into captivity. In May 2012, when Lillie's only son died, the friend filed for guardianship. He lied to the court and said he was a nephew. He also failed to name Janie as next of kin, making it seem like Lillie had no living family. It came out later in court that Lillie was medicated. Court evaluators examined her under those conditions. After Janie found out and insisted on visiting her sister, he amended the petition. He also found the estranged granddaughter, who had just filed bankruptcy. At first, she did not want to get involved. However, when she realized she was named in Lillie's Trust, she joined forces with him. After eight months of being captive, Lillie found an opportunity to be alone with the phone and called 911. She said she was being held against her will. The officer, who spent four hours with her, saw she was of sound mind and did not enact the Baker Act. Lillie's first request was to call her sister in New York. That night, Lillie handwrote her wishes which included removing the granddaughter from her Trust, hiring another attorney and getting an independent psychiatric evaluation. The next day, her niece Sheila Bryant flew in from New York and Lillie got the document notarized. Janie flew to Orlando the next day.

C. Predation (*guardian and/or attorneys engage in calculated scheme to take over assets*)

On October 4, 2012, an Orange County judge saw *no need for guardianship* and rejected the petitions by the friend and granddaughter that claimed Lillie was “paranoid.” The judge noticed a close relationship between Lillie and her niece so he asked Sheila if she would remain nearby her aunt. She agreed. The granddaughter testified that she did not really know her grandmother. In subsequent court documents, the attorneys for the granddaughter (hereby known as “the Firm”) changed the story and said she had a “close and loving relationship” with Lillie. The family thought the ordeal was over. They had thwarted the attempts by the friend and granddaughter to take over Lillie’s life. Janie went back to New York and withdrew from the case. Lillie and Sheila went to Palm Coast. Then, Lillie discovered that the granddaughter had put her name on her bank accounts while she was captive. With a letter from her attorneys and the original doctor’s note, the granddaughter was apparently able to change various signature cards blocking Lillie from accessing her money. Lillie was “shocked and devastated.” On October 11, 2012, the Firm sent Lillie’s attorney a letter stating that the granddaughter had “accepted appointment as Successor Trustee.... Our client does not want to see the trust property or contents at risk. Considering Ms. White’s condition, we are concerned about loss or damage to her individual assets.” That declaration was in bad faith since Lillie had not relinquished the Trust, did not have a “condition,” nor had been declared incapacitated by the court. It was predatory.

D. Faulty Evaluation (*court evaluators support a predetermined outcome to strip all rights*)

In December 2012, Lillie sought an independent psychiatric evaluation which concluded that she had no paranoid delusions. She then re-wrote her Revocable Trust removing the granddaughter and her children which was her right as grantor. She added her sister and niece as beneficiaries. The Firm claimed Lillie did not properly fund the Trust. Under the Firm’s direction, the granddaughter was still controlling the Trust assets and refused to relinquish them. The Firm kept filing documents stating that Lillie was “paranoid” and needed a guardianship for “protection.” The first examiner report had been deemed stale and the comprehensive psychiatrist report was not used. Based on the Firm’s request, a second set of examiners were called in to determine capacity. In May 2013, three examiners from the court list saw Lillie *together for 25 minutes*. They had already spoken to the family friend instead of Janie and had reviewed the stale report while Lillie was captive. They indicated that Lillie had “paranoia” and “confusion” because she believed that someone was trying to steal her money. One of the examiners indicated that she: “...identified three parties as attempting to gain access to her money by this guardianship action.” One examiner was greatly concerned that Lillie did not know her mortgage amount which happened to be on autopay. They also indicated “incontrovertible evidence of memory loss” when Lillie couldn’t recall the contesting parties of World War II. When questioned in court, each of the examiners showed no discernment *why* they stripped away specific individual rights.

E. Biased Adjudication (*judge makes determination based on flawed evaluations and bias toward guardianship*)

The flawed evaluation led to Lillie’s limited guardianship that stripped away twelve of her fourteen individual rights and effectively deemed her a “non-person.” On June 30, 2013, the Orange County court named Janie limited guardian per Lillie’s request in court testimony. The judge said, “I think it’s in Ms. White’s best interest to have someone who lives with her or who is near her or who’s in a position to help her with decisions that she needs to make. I don’t find that [the granddaughter] can do that.” Janie did not believe Lillie needed a guardian but had to comply. In the September 18, 2013 hearing, four months *after* the ruling of limited guardian, Lillie gave very clear testimony. The judge stated, “Also note, for the record, that Ms. White has appeared in court today. And I am not making any diagnosis as to her mental abilities. I do not claim to make any decisions about whether or not she’s incompetent or not. But in terms of today’s hearing, she has been very articulate. And I counted three instances where she helped witnesses in this case recall details. And to me, that suggests that she ought to be able to say, at this point, who can help with her finances.” When Lillie was asked if she would like the court to remove the granddaughter as successor trustee, she replied, “Without a doubt... She just filed bankruptcy in March, and if she could get her hands on my assets, I would have to go to the poorhouse, because she’d spend them immediately.” The judge named Janie as successor trustee.

F. Vexatious Litigation (*attorneys make false claims and then litigate them to increase billings*)

Immediately, the Firm began to claim there was a “family dispute,” object to anything filed by Lillie and/or Janie and defame Janie and Sheila even though they did not know them. They kept claiming that the friend was a “step-nephew,” and that their client had a “long loving relationship” with her grandmother. Although Lillie refuted the falsities, the Firm kept repeating the lies in court documents. The granddaughter filed multiple

petitions for visitation and communication even after Lillie made it clear in court she did not want to see her or her children. The Orange County court recognized that Lillie retained the right to determine with whom she would socialize and denied the petitions. Her attorney sought a second psychiatric evaluation with the same doctor she saw in 2012 and he determined that she possessed testamentary capacity as before. With that, on April 17, 2014, her attorney corrected the 2012 Trust keeping Lillie's wishes intact, per her request. That became the 2014 Trust. The Firm accused Janie of changing the Trust. Lillie's attorney reiterated that Janie was not in Florida and did not change it. The granddaughter appealed the court's ruling on replacing her as trustee and she lost. The Fifth District Court of Appeals affirmed Janie as limited guardian and successor trustee. While the granddaughter controlled the Trust, the Firm was improperly paid \$40,000. The rest of their legal fees were being "stored" to bill against the estate later. During the case, there were over 1,000 filings.

#### G. Constant Victimization (*senior is subjugated and subjected to legal harassment and abuse*)

Lillie was forced to continuously defend herself in court proceedings. She expressed that she felt constantly attacked. In the 01/25/15 Affidavit filed in the Orange County court, Lillie said, "[My granddaughter] soon learned what she had to gain by getting me declared incapacitated and, since then, she has shown me no mercy... [and] has dragged me through these Guardianship proceedings for nearly three years because I believe she wants to take what I have worked so hard to accumulate. I am a victim in this situation, and I want it to stop. I am spending my hard-earned savings to defend myself as [she] takes this case to all levels of the court system showing no love or concern for me... When my son was very ill and needed a kidney transplant, I decided I would help her by putting her in my Trust in 2006 as Successor Trustee... That was one of the biggest mistakes I ever made because I really did not know what kind of adult she had grown up to be." In June 2015, there was another doctor's report that concluded Lillie had capacity to determine her estate plan. In the Orange County court, Lillie and Janie were able to fight off the legal attacks from the Firm. Despite the mounting stress of the guardianship, Lillie was able to live a somewhat normal existence in her home with her family – having dinner, watching movies, etc. Nieces and nephews were able to visit. Pictures and video demonstrate loving family interactions. However, in 2015, after Lillie filed to regain her rights and the case was moved from Orange County (the jurisdiction of the friend's home) to Flagler County (where Lillie's home was located), everything changed drastically. There were shocking discrepancies between the two counties.

#### H. Due Process Violations (*judge ignores due process and appoints court insiders paid from assets*)

Through a rapid succession of decisions, the Flagler County judge "put aside" the Orange County rulings, suspended Janie as limited guardian and trustee with no hearing or evidence of wrongdoing, and appointed three unnecessary court agents. The guardian ad litem, recommended by the Firm, seemed to be working on their behalf. He was immediately adversarial to both Lillie and Janie and prevented Lillie from hiring the attorney of her choice which led to the appointment of the attorney ad litem. She was also aggressively adversarial to both Lillie and Janie and recommended stripping away *more* of Lillie's rights. The Firm was allowed to re-litigate issues that were already resolved by the Orange County court and Court of Appeals. They made up claims that Janie misappropriated funds. Despite a court-ordered audit and independent CPA report that refuted the claim, the judge appointed a special fiduciary who was then appointed emergency temporary guardian (ETG). All three court agents were attorneys paid generously out of Lillie's assets.

#### I. Deception (*court-appointed agents lie to the court to entrap the senior and defame the family/supporters*)

On July 1, 2016, the ETG (on her first day) and attorney ad litem knowingly made false "missing person" and "abandoned house" claims to the Flagler County Sheriff's Office and accused Janie of "doing something" to her sister. By contrast, the officer wrote: "I observed the home to be clean and orderly. At the time of my visit, White was not incapacitated... I did not suspect abuse or neglect." The ETG also stated she would be "making living arrangements" for Lillie even though she had not met her yet or been in the home. At the August 19, 2016 hearing, the ETG and attorney ad litem "ambushed" Lillie and took her to a room to be examined for further incapacity. Lillie, nor her family, had advanced notice of this examination for that day. In addition, they forced Lillie to meet with representatives from an assisted living facility, even though Lillie's Trust indicated she wanted to "age-in-place." The ETG then sent Janie and Sheila a letter stating that they did not have permission to live with Lillie even though just weeks before a court-appointed doctor wrote in a report that Lillie's care situation was good. As a response to the letter, Janie's attorney filed an injunction motion to enjoin the ETG from changing Lillie's living arrangements and to reach agreement on a "qualified, disinterested geriatric care manager" to make an assessment. The ETG ignored the injunction motion and calls/emails from

the attorney, then hastily sent someone to Lillie's house who said she was a physical therapist. The person did not assess Lillie's physical environment and mental, social, and emotional functioning and independence in any comprehensive manner. She did not ask about the caregiving situation or existing social support. However, the ETG referred to that brief social visit as a "care manager's report."

J. Deprivation (*guardian neglects senior while billing high rates against the estate*)

The ETG failed to pay Lillie's bills or give Lillie any of her own money for food and living expenses, yet she was billing \$375 an hour for her own "services." Her first month's bill was \$17,000. Lillie went three weeks without hot water, and at various times the water, electricity and TV were turned off. Janie and Sheila paid Lillie's basic expenses out-of-pocket with no reimbursement. Teresa filed a complaint against the ETG for neglect.

K. Abduction (*court agents abduct senior and refuse to disclose her location*)

At 12:03 p.m. on August 30, 2016, Janie's attorney filed an objection to the initial guardianship plan. *By 1:00 p.m., Lillie was gone, never to return home.* The ETG and attorney ad litem seized her from a regular doctor's appointment in a deceptive manner while Sheila was filling out paperwork in the other room. There was no notice, no danger, no emergency and no justification for Lillie to be removed from her core family support, and no reason for the attorneys to even be there. They refused to disclose Lillie's location. They took her *before* there could be a hearing on the injunction motion and while she still retained the right to choose with whom to socialize. It went directly against Lillie's expressed wishes to remain in her home and be around her family. This extreme action was endorsed by the granddaughter and guardian ad litem in subsequent court documents. Lillie had been very vocal about feeling victimized and it seems the only way to silence her was to literally "take possession of the body." The judge ignored multiple emergency motions for judicial review.

L. Medical Obstruction (*senior is medicated to mimic/enhance dementia and force compliance*)

On September 12, 2016, an examining report indicated that Lillie had: "major neurocognitive disorder due to Alzheimer's Disease with severely impaired cognitive functioning. She was confused and severely disoriented... She cannot live independently and cannot manage her affairs. She is at risk for... exploitation, or undue influence." This assessment happened after Lillie was abducted and isolated. It shocked Janie and her family. Janie's husband had Alzheimer's Disease and she took care of him for over eight years. Before Lillie was taken, she did not exhibit signs of Alzheimer's. To the family, such significant and sudden decline meant that either the doctor lied or Lillie had been "chemically restrained" in the institution before the evaluation. The family's baseline is the video footage from the week of July 25, 2016. It was filmed one month before Lillie was kidnapped and demonstrates her clear mental capacity. There are hours of unedited footage and transcripts that investigators can review and study. Excerpts can be found at [www.elderdignity.org](http://www.elderdignity.org).

M. Legal Obstruction (*court agents block family from hearings and "speak" for senior*)

After five years of trying to declare Lillie totally incapacitated, the Firm, with the help of the court agents, was successful on September 23, 2016. Lillie's last two rights were stripped away – her right to vote and right to choose with whom to socialize. There was no reason to take those away except to totally control her Trust and silence Lillie. Lillie was not at her own hearing, nor were her sister or nieces. The attorney ad litem requested that the hearing be closed and put forth that Janie did not have standing to participate because she was not a lineal descendant and thus not "next of kin," and was not an "interested party." The judge deemed Janie "not necessary" and blocked Sheila and Teresa from testifying as well. The attorney ad litem waived Lillie's appearance. Only the granddaughter, the Firm and attorney ad litem were present. Janie's counsel could not be present. The judge bifurcated the docket so Janie could not see certain filings, particularly related to finances. The result was to hamper Janie's ability to object to their actions, appeal decisions or sue them.

N. "Legalized" Isolation (*court agents isolate senior from family/supporters and/or greatly restrict access*)

After Lillie was taken, Teresa and Sheila went to the Flagler County Sheriff to file a missing person claim and they were told they could not because Lillie was not "missing;" the guardian knew her location. The family found out years later that Lillie had actually escaped during Hurricane Matthew, just weeks after she was taken. She called a neighbor whom she had known for decades and had memorized his number. He got her. When she made it home, Janie and Sheila had already evacuated up to Tallahassee. Apparently, the ETG and attorney ad litem took Lillie again like an escaped slave. Lillie obviously wanted her sister but they hid her in another county. The judge repeatedly denied visitation based on the guardian and attorney ad litem's unsubstantiated verbal claims that Janie and her family were "agitating" Lillie. There was absolutely no

evidence provided. Janie submitted police reports indicating that the guardian had lied to law enforcement and the court repeatedly about why she took Lillie (e.g. house was “in disrepair”), but that did not matter. In November 2018, private investigators found Lillie in a locked memory care facility an hour away in Volusia County. Janie and Teresa flew to Florida immediately and got inside the facility to see Lillie before the other side found out they located her. It was a joyous reunion. Lillie was thrilled to see her sister and niece and had no idea that she was being hidden. On camera, Lillie said she wanted her sister, wanted to speak to the judge and wanted to go to New York. Janie filed the details of the visit with the court, but the judge would not hear it since she had taken away Janie’s “interested party” status. Even though the family now knew where Lillie was located, they needed a “passcode” to even speak with her. No one would give them the code. Lillie’s various nieces and nephews called the facility to see if they could get through with no avail. They asked if they could send flowers and cards. The Firm responded that anything should be sent to them. Lillie was isolated from her loved ones for 1,585 days – 4 years and 4 months. She was treated like a human trafficking victim.

O. Psychological Manipulation (*guardian is unnecessarily cruel to senior to break spirit and increase dependency*) While blocking Lillie’s sister (and trusted go-to person), the court-appointed guardian “force-fed” the estranged granddaughter on Lillie allowing *her* to visit despite Lillie’s testimony that she felt the granddaughter was victimizing her. It was like forcing a rape victim to visit with the rapist. In her home, Lillie had pictures of family all over. In the facility, there was only *one* picture, the estranged granddaughter. The guardian and team of attorneys blocked a family of fifty people from even speaking with Lillie and tried to wipe them out of Lillie’s environment. It seems they were trying to force her into “learned helplessness” or Stockholm syndrome.

P. No Assistance (*no official helps to save the senior or intervene in any meaningful way*) In September 2016, Teresa wrote “Is Elder Guardianship a New Form of Human Trafficking?” for *The Huffington Post* and published excerpts of Lillie’s videos on [www.elderdignity.org](http://www.elderdignity.org). After that, she received a flood of emails and calls from advocates and victims across the country. Only then did the family realize this horrific victimization was a common pattern and practice. Teresa reached out to multiple entities for help from Adult Protective Services, the state Ombudsman and the Chief Judge, to the Palm Coast mayor, media, local representatives, Florida Attorney General and Governor. She attended senate hearings in D.C. and spoke with politicians on the Senate Special Committee on Aging, the Department of Justice and FBI. Teresa filed complaints with Florida’s Office of Public and Professional Guardians (OPPG) and the Judicial Qualifications Commission. Florida officials would say “Lillie is fine” and the OPPG’s investigation kept on being extended as “open.” Since there was a judge involved in signing off on the actions, everyone seemed to be on stand down waiting for Lillie to die. The Firm and attorney ad litem used Teresa’s activities as another reason to deny Janie visitation with her sister. It was a “color of law” bullying tactic – a form of whistleblower retaliation. Janie hired a half dozen attorneys who were either working with the other side or did not want to “upset” the judge. She filed multiple appeals, but they were all based on the false lower court records. Only one appellate attorney seemed to work on her behalf, and he still lost even though there were clear errors of law.

Q. Intimidation / Elimination (*attorneys and court agents weaponize law to intimidate and eliminate family*) In June 2016, Janie had been suspended as guardian and trustee with no valid justification. Since they could not get rid of her for wrongdoing, in the December 12, 2016 hearing, the judge finally removed her due to “illness” even though her cardiologist confirmed that her high blood pressure spikes were due to her sister’s abduction and not a permanent condition. Despite multiple violations of Florida Statutes, the ETG was made permanent guardian and trustee. After that, there was a rapid succession of actions to further control Lillie and her estate, and to get rid of Janie. For example, the judge issued an order to strike Janie’s pleadings for failure to appear at a deposition even though she had not agreed to the date the Firm selected and had filed to show good cause and request relief. Her brother-in-law was very ill and subsequently died. Then, the judge issued orders specifically prohibiting Janie and her family from being given a copy of any transcripts and prohibiting everyone involved from *ever* sharing the contents of the transcripts. Also, Janie was hit with almost a half million dollars in unwarranted sanctions based on frivolous/made-up claims by the Firm and court agents. Even though the case was in Florida, she is still fearful that she will lose her New York home of 50 years.

R. Liquidation (*attorneys/court agents drain the estate through excessive billing, selling assets and other actions*) While Lillie was locked away, the attorneys liquidated her assets to pay their fees even though Lillie had a sizable pension. They evicted Janie and Sheila from Lillie’s home and sold the house. They sold and/or dumped everything in Lillie’s home, including family heirlooms and pictures. Janie submitted evidence of

double billing and that the guardian undervalued the assets, but the judge did nothing. Teresa spoke extensively to the Flagler County clerk of court but he said he did not have the power to initiate an audit. The judge granted the court-appointed guardian's petition (supported by all the others) to void Lillie's 2014 Revocable Living Trust and authorized her "to reestablish the Ward's 2006 estate plan" which named the granddaughter and her children as beneficiaries. This was based on the guardian's *opinion* that this was in Lillie's "best interest." Despite being the original trustee and beneficiary in the 2014 Trust, Janie was not served with the petition or noticed for the hearing. Lillie's isolation enabled unhampered and extensive "undue influence" with *decisions made supposedly by Lillie that were blatantly inconsistent with her previous choices.*

S. Cloak of Secrecy (*court insiders hide information through closed hearings, sealed dockets and other means*)

It was easy to access filings in Orange County. However, filings in Flagler County were often hard to find and/or hidden on alternate dockets. In addition to sealed records and bifurcated dockets, there were hearings Janie knew nothing about. In September 2018, the granddaughter was named trustee. In November 2018, after the court-appointed guardian resigned suddenly (the first OPPG report was about to be released), the granddaughter was named guardian. Both appointments happened behind closed doors without anyone else in the Sykes family knowing. Janie happened to find out in an appeals filing. The judge knew there was a large family and that Janie had filed to regain guardianship. Janie should have been noticed about the change in her sister's situation. She was not given the opportunity to object or appeal. The granddaughter did not qualify to be trustee or guardian. She had filed bankruptcy and the Orange County court had already removed her as trustee *once* per Lillie's direct testimony. In addition, Lillie had testified that she felt that the granddaughter was victimizing her and that she did not want anything to do with her or her children. She clearly did not want her to be her guardian. Instead, the Flagler County court put the granddaughter *in charge of Lillie*. It seemed to be a closed door deal to allow the Firm and granddaughter to take over the estate.

T. Cremation (*the senior is cremated when the money runs out or the senior dies*)

On December 31, 2020, Lillie died alone apparently of COVID-19. She had been safe in her home and had wanted to "age-in-place." The guardianship violated her wishes and rights and put her in harm's way. The granddaughter, who was then guardian, cremated Lillie before Janie knew her sister had died. Janie had been pleading with the Firm via email to speak with her sister because she had a "feeling" something was wrong. Teresa had called for a welfare check and the officer said Lillie was not there. That put the family in a panic. Teresa found out her aunt died almost two weeks later through another advocate who was researching the court records on the family's behalf. Based on court filings, it was clear that the granddaughter and the Firm had known Lillie was dying yet they did not let Janie speak with her sister one last time. It was inhumane.

U. Lack of Prosecution (*no one prosecutes the guardian or attorneys even with evidence of wrongdoing*)

Actions taken by the Firm and other attorneys should have been considered constructive fraud. They initiated a calculated scheme and lied repeatedly to the court in order to take over the estate of an innocent woman. They used guardianship laws as a weapon. The Flagler Court itself brazenly violated due process. On March 2, 2021, the Palm Beach County Division of Inspector General (IG) issued an investigation report on the court-appointed guardian based on the 2016 complaint Teresa filed. Although the 55-page report was highly redacted, it was clear that the guardian financially exploited Lillie. For example, she hired her ex-husband and sister with Lillie's money, paid herself high fees without prior notice to the court, undervalued assets, and failed to obtain court approval to "represent" Lillie as an attorney in seven appellate cases (actually working *against* Lillie). As she was using Lillie's estate as her personal bank, she failed to even visit Lillie "once per calendar quarter" as required. The report stated that the Clerk's IG "has a reasonable suspicion" that multiple criminal statutes may have been violated. Teresa followed up with the OPPG and various Florida law enforcement agencies and no one would tell her which entity would investigate. Even with findings of wrongdoing, no one in Florida seems willing to prosecute the court-appointed guardian. She is still practicing elder law.

V. Rigged Probate Hearing (*guardian and attorneys are allowed to drain the rest of the estate in probate*)

In probate, the Volusia County judge (who had been Chief Judge in Flagler) appointed the granddaughter as personal representative which meant that Janie did not have standing to see the final accounting or sue. Even though the guardian who sought to void Lillie's Will had a substantiated pattern of lying to the court, the judge did not consider the information. The granddaughter and attorneys took what was left of Lillie's nearly \$5 million estate. Janie and Sheila, who were in Lillie's Will, received nothing. Lillie's wishes were ignored.

## A Path to Reform: From Oppressive to Supportive

In New York, this year is the 30<sup>th</sup> anniversary of Article 81, yet there are still significant flaws in the law and its enforcement. The current public policies actually *enable* exploitation and have bred a predatory industry that is causing irreparable harm to seniors and their families. The system is built on a flawed foundation. Since ancient times, guardianship was designed to protect the transfer of property from male heir to male heir. It was not about a person's well-being and it always discriminated against women given their "levity of mind."

The current adult guardianship system at its best is still oppressive, restricting freedom and self-determination and leaving a person with fewer rights than a convicted felon simply to "protect" them. At its worst, the system serves as a form of slavery, subjugating and exploiting a person for financial gain. In many instances, it has devolved into "people smuggling," similar to bonded labor. There are many forms of trafficking, but one consistent aspect is the abuse of the inherent vulnerability of the victim. Unfortunately, seniors and the developmentally disabled are the perfect targets, similar to Nazi Germany's persecution of the "unfit." Ironically, in states where human trafficking is most prevalent, such as Texas, Florida, New York and California, guardianship exploitation seems widely accepted by those vested in the system.

The exploitation is not just affecting the rich. Low to middle class people who have finally achieved the American Dream of homeownership are having that key asset stolen from them. It interrupts wealth formation and wealth transfer and inflicts emotional trauma for generations to come. Predatory guardianships seem to disproportionately affect women and the crime seems to be rising in communities of color and with those traditionally marginalized, including Holocaust survivors. How do we reform a system that is so fundamentally flawed by design and practice? Would we try to reform slavery? Like slavery, this is *systemic injustice*.

Adult guardianship is an outdated legal construct with the government intruding in a family's life in ways that are unconscionable. The court itself is violating Constitutional and human rights. If a person has no money and no family, then a social system to humanely support them is important. However, if a person has assets to pay for support and family willing to help, the government should have NO role in the family's affairs.

**The boldest legislative reform is to dismantle private adult guardianships in New York.** It is time to modernize the system transitioning from an oppressive, intrusive and expensive institution to a model that is transparent, person-centered and community supported with no court intervention. Based on my personal experience and work advising victims nationwide, here are three strategies to move in that direction:

**FIRST, slow the flow of people into private adult guardianships.** Currently, a less restrictive alternative to guardianship is the legislative intent in Article 81 but it is rarely followed. Therefore, *mandate* that the court exhaust *all* lesser restrictive options *before* a guardian is appointed like other states have done. In addition, recognize supported decision-making agreements for seniors. The Governor recently signed multiple laws modernizing how the state supports the developmentally disabled including recognizing supported decision-making agreements. Since seniors often age into disability through cognitive decline, we must at least make sure the same alternative to guardianship is recognized for them. Then, only people who are indigent with no family or friends to serve as support options should be appointed a publicly funded guardian after rigorous due diligence is performed. Court mandated private guardianships can be phased out. Eventually, the public system should also be overhauled to minimize predatory actions such as Medicaid fraud.

**SECOND, enhance accountability, transparency and speed of intervention.** Currently, the private adult guardianship system is opaque and cloaked with secrecy which facilitates exploitation. The judge has very wide discretion. There is often no due process, no evidentiary hearings, no jury trial, and no rules of evidence. Attorneys can lie without recourse and extend the process out until the senior dies. Ex parte communication and obvious conflicts of interest seem widely accepted. Records are effectively sealed and the family is allowed to be bullied with tools like stayaway, gag and restraining orders, as well as sanctions. Isolation of a loved one is used as an extortion tool (i.e., "I will *allow* you to see your mother if you pay my requested fees and/or withdraw any opposition to my filings"). If the judge has conscious or unconscious bias, the senior and family have no chance and no remedy. If the judge is recused, the next judge is likely to support the previous rulings. Any appeal, if you even have an order to appeal, is doomed since it is likely based on fraudulent lower court records. There is no security of justice. Some may say that the exploitation is mainly caused by family

members. However, most everyday people – even if they may be greedy with bad intent -- do not know how to weaponize the guardianship system for financial gain. Legal insiders (e.g., lawyers, guardians) usually instigate and guide the process understanding that *they* will likely receive more from the estate than the family.

To enhance accountability, transparency and speed of intervention for current cases, I recommend open electronic records, mandated data collection, automatic audits, jury trials for contested cases, court watching, closed circuit cameras in the courtrooms, no judicial immunity for guardians, no restrictions on family interaction unless there is a confirmed case of abuse, enhanced training for key stakeholders (e.g., judges, clerks, law enforcement), and penalties for violations. An independent Citizen Oversight Committee, not tied to the court, could provide increased speed of intervention when the legal system is being manipulated to delay justice. In addition, a Law Enforcement Task Force with subpoena power could be formed to review and fast track current cases for constructive fraud and other potential wrongdoing, as well as develop a feasible path for retribution for the harm already caused. Currently, there is no place to go for help to fight the systemic abuse.

**THIRD, reframe and professionalize the support model.** Currently, the system itself is *enabling* exploitation through a misalignment of job duties and competencies, minimal training requirements, and an open-ended compensation structure. After a seven-hour training focused on legal responsibilities, attorneys and others can become guardians and court evaluators in New York through the Part 36 appointments by the court. With no required training in healthcare or financial management, they are deemed equipped to take over a person's entire life including personal care and asset management decisions. They also have the ability to pay themselves "reasonable compensation" which often ends up being upwards of \$200 to \$600 an hour. Despite the intention to be "fair, impartial and beyond reproach," guardianship appointments increasingly seem like "bonuses" for attorneys and other court insiders. The structure is misguided and not person-centered.

To professionalize the support model, I recommend *aligning the roles with the actual job duties, required competencies and standard compensation*. Compensation Alignment is a common human resource practice in business. This approach would provide an opportunity for qualified experts with relevant training and licensing to fill these roles at a pay range standard to these positions. Specifically, a *personal needs guardian* is responsible for the care of an incapacitated person and support for their basic decision-making. Therefore, I propose that the benchmark for the required training and compensation for that position be a licensed clinical social worker preferably with a specialty in psychiatry and/or gerontology. A *guardian of property* is charged with helping to manage the property and financial affairs of an incapacitated person. Therefore, I propose that the benchmark for that position be an entry-level to mid-level licensed financial advisor. To increase accountability, there would be pay transparency and 360 performance reviews by all stakeholders, including the client and family. Like in business, if the person does not perform up to par, that person is replaced.

Most importantly, this structure is *in line with the legislative intent of asset preservation for the person under guardianship*. In New York, the pay range for those roles would likely be between \$40 to \$60 an hour based on industry standards with fee caps tied to job duties. This would provide pay equity and weed out predators who are seeking these roles simply for high billing hours. It also opens up opportunities for a whole new group of experts who have relevant training for the specific jobs, follow a code of ethics related to the roles, and must take frequent exams to keep their licensing. This approach can be applied to other roles as well.

## Final Remarks

As we a) slow the flow of people into private adult guardianships, b) enhance accountability, transparency and speed of intervention, and c) reframe and professionalize the support model, we will be better positioned to phase out private adult guardianships in New York and transition to a community supported, person-centered model with no court intervention. These common-sense legislative changes can have broad impact for New Yorkers and be a model for the rest of the country. New York State can spend time and money expanding research and development for a positive approach to supporting seniors versus upholding an outdated and oppressive system that is discriminatory and causing grave harm. To be an elder is a privilege, not a "condition" causing you to be tossed aside and abused. If we are lucky, each of us will get old. Let's create a society where we can age with respect and dignity and ensure that our assets and individual rights are truly protected. I look forward to advising and helping to enact these changes. Thank you.