

About this series

Caring for the aged and infirm was once a family affair. Now, it is a business. In documenting this change, reporters Robin Fields, Evelyn Larrubia and Jack Leonard and researcher Maloy Moore examined records of more than 2,400 cases handled by California's professional conservators since 1997. They also conducted hundreds of interviews — with probate lawyers, judges and independent experts as well as people under conservatorship and their loved ones.

**Monday:** How probate courts have failed the elderly.

**Tuesday:** One conservator's troubled career.

**Wednesday:** L.A.'s public guardian — a canceled promise.

On the Web

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**PART TWO**

**GUARDIANS FOR PROFIT**

## **Justice Sleeps While Seniors Suffer**

**Probate courts are supposed to watch conservators' conduct and discipline those who abuse their authority. They've failed dismally in this vital role.**

By Jack Leonard, Robin Fields and Evelyn Larrubia  
Times Staff Writers

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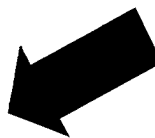
Emmeline Frey was wheeled toward the bench, escorted by a family friend. She was 93 years old and frail, suffering from dementia and a broken hip.

In San Diego County's busy Probate Court, it was up to Judge Thomas R. Mitchell to decide how to preserve the \$1 million she had amassed pinching pennies over a lifetime. On the recommendation of Frey's attorney, he appointed a professional conservator named Donna Daum.

Frey's affairs were now in the hands of a caretaker acting under court supervision. Her money should have been safe.

It was not.

Daum gave her son, a car salesman turned financial advisor, more than \$500,000 of Frey's savings to invest. Over the next four years, the investments lost more than



\$100,000 in value while the son collected commissions.

Mitchell, who described himself as the "super father" of the seniors who entered his courtroom, never questioned what Daum was doing with her client's money or why her son was involved.

The case illustrates how inaction and inattention by the courts have left many elderly Californians vulnerable to abuse by the very people entrusted with their care.

Professional conservators wield enormous power over people deemed too infirm to look after themselves. They choose their doctors, control their bank accounts and decide where they will live — even who can visit them.

Probate courts, which appoint conservators, are supposed to monitor their conduct, scrutinize their financial reports and fine or remove those who misuse their authority.

Yet the courts have failed dismally in this vital role.

A Times examination of more than 2,400 conservatorship cases since 1997 found that judges frequently overlooked incompetence, neglect and outright theft.

Some conservators steered business to friends and relatives without protest or punishment from the courts, records show. Some failed to pay their clients' bills. Others pocketed their cash and jewelry.

In most cases, evidence of these abuses was in the courts' own files.

An online registry created six years ago to identify and track problem conservators has proved a failure. The reason: Most county courts have ignored it, even though participation is mandatory.

"The real problem is sloth, taking the easy way," said Marc Hankin, a Los Angeles attorney who helped write laws on elder abuse.

"The last thing the judge wants to do is make a decision."

Probate judges say that they do their best, but that the courts are swamped with cases and short of staff.

The conservatorship system was designed to help family members take care of loved ones. Now, more and more cases are handled by for-profit caretakers like Daum, whose fees are paid from their clients' bank accounts.

Elderly wards often have no surviving friends or family members to speak up for them. Yet the culture of the probate courts, stuck in an earlier era, reflexively grants conservators the benefit of the doubt.

They are assumed to be acting in their clients' best interests — in some cases even when their own filings with the court suggest otherwise.

"If no one complains, the court isn't out there to investigate," said retired Judge Robert Letteau, who supervised probate courts in Santa Monica and downtown Los Angeles from 1995 to 2002. "If stuff's being stolen, misappropriated, we wouldn't know about it."

### **Paying a Steep Price**

For years, Emmeline Frey managed her husband's tuna fishing business, keeping the books, buying equipment for his 42-foot trawler and saving as much as she could for their retirement.

After he died, Frey guarded her nest egg. She rarely ate out. She wore jeans until they were threadbare. She told a friend she would never take a risk on the stock market, preferring the security of savings accounts.

Under conservatorship, however, Frey had no say in what happened to her money.

That was for her conservator to decide. Yet Daum, a former administrator at a social service agency, had little investment experience. So, beginning in late 2000, she entrusted her son, Timothy J. Spalla, with at least \$3 million belonging to 13 of her court-appointed clients.

Only three years earlier, Spalla had been working at a Dodge dealership in Wisconsin.

The first sign that something was amiss came in November 2002, when Daum disclosed in a report to the court that Spalla had put Frey's money in mutual funds. Conservators must get court approval for such an investment. Daum had not.

Spalla's investments did poorly, and his mother's clients paid the price — along with his commissions.

In Frey's case, Spalla took a gamble on aggressive growth funds that took a beating after the stock market began to tumble in 2000.

Because his mother had nearly emptied Frey's bank accounts, he had to sell fund shares each month — often at a steep loss — to raise money for her living expenses.

By the time Frey died in February 2004, Spalla's investment decisions had cost her about \$105,000 — 14% of the cash she had at the beginning of her conservatorship — judging from Daum's reports to the court.

Spalla, 37, of West Allis, Wis., said in an interview that he had made bad choices for his mother's clients but had slowed the losses by switching their money into annuities that

guaranteed a fixed interest rate.

"I've gone through the growing pains," Spalla said. "We did make a mistake going into mutual funds, but we didn't know that going into them."

Daum said she did not personally benefit by putting her clients' money in her son's hands and saw no conflict in it.

"I'm not so sure that nepotism is that bad... I know the boy's ethics," she said in an interview. "I've been a manager. I know that you hire people because you can work well with them."

Court staff members called Mitchell's attention to the investments and the role played by Daum's son, but the judge took no action, records show.

Mitchell, who retired in 2003, said he did not recall the case. He said that as the lone probate judge in downtown San Diego, he handled as many as 100 cases a day.

"The volume that we had with one guy doing it, you probably missed some things," he said.

After Frey died last year, one of her heirs complained to the court that Spalla had bought the elderly woman a five-year annuity when she was 97 and in ill health. The investment would have been profitable only if Frey had lived at least six more years. She lived four months.

After Daum admitted making investments without court approval in another case, Judge William H. Kronberger Jr. stripped her of financial authority over four clients. He criticized her for hiring her son, whose commissions totaled more than \$44,000 in just four of the 13 cases he handled.

She was ordered to pay \$20,500 for the court's investigation but was not required to repay clients for their losses. Frey's beneficiaries decided against a legal battle with the conservator and settled with her for \$6,000.

"Who do you turn to?" asked Darleen Hellman, a friend of Frey's and one of her heirs. "This could have been your mother, and every time you turn around and ask questions, you get nowhere."

### **A Huge Caseload**

Thirty years ago, California tried to put muscle into court oversight of conservators.

The state created a corps of court investigators whose duties include knocking on the doors of elderly wards and checking that they are alive and well treated and have food in the refrigerator.

They joined attorneys and examiners working for the probate courts who are supposed to comb through conservators' financial reports to make sure they aren't stealing or squandering clients' money.

Such steps made California a leader in protecting the rights and resources of the elderly. Over the years, however, they have been eroded by tight budgets and an explosion in the number of elderly people under conservatorship.

In 1995, 1,024 new conservatorship cases were filed in Los Angeles County. Last year, the number was 1,408, a 38% increase. The number of court investigators — 10 — is the same as it was a decade ago.

Those investigators have fallen far behind in making home visits, which are required a year after someone has been placed under a conservator and then every two years.

An estimated 3,540 people — nearly half the county's caseload — are overdue for a visit. That means it has been at least a year, and in many cases much longer, since a court representative checked on them.

In San Diego County, investigators are scrambling to get to 1,363 people who are past due for their visits. Two-thirds of them have not been seen in more than three years.

Probate attorneys and other court staff, buried in paperwork, can barely keep up with the financial reports in which conservators must account for wards' money.

"You can't believe the caseload that these probate attorneys and examiners are under," said Annette deBellefeuille, former head of the San Bernardino County Bar Assn.'s probate section. "It's enormous."

As a result, questionable payments have been rubber-stamped.

A conservator billed 83-year-old Margaret Francel for working 60 hours — in a single day. A Santa Barbara court overlooked the clerical error and approved the \$3,300 bill.

Los Angeles County's court lost track of who was looking after Barbara Daly, an 86-year-old suffering from dementia.

In the space of seven months, a judge appointed two conservators for Daly.

The conservators and the four attorneys who helped sort out the mess charged \$9,789. Who paid? Daly.

Courts are supposed to ensure that conservators file financial accountings on time and should discipline those who don't. Conservators must submit the reports a year after they are appointed and every two years thereafter.

But judges rarely enforce the rules, *The Times* found. In Los Angeles County, hundreds of reports were filed late. Even accountings that were five or six years late did not prompt the court to summon conservators and demand an explanation.

From 1997 to 2003, the Los Angeles court issued such orders just 23 times, records show.

"I'm shocked at that number," said Sandra Riley, the court's supervising probate attorney.

The county's former supervising Probate Court judge, Thomas W. Stoever, said the system's failings stemmed from too many cases and too few employees.

"Do the courts have the right resources to do a totally complete job? I don't think so," said Stoever, who retired last year. "To a large extent, the court must rely on the professionalism of the attorneys and the [conservators]."

### **Court's 'Eyes and Ears'**

On a recent morning, Los Angeles County Probate Court investigator Frank Cowen crisscrossed the San Fernando Valley in his Volvo sedan, visiting five seniors in less than four hours.

At a Northridge home, a man in his 80s struggled to sit down in his armchair. His son had asked to become his conservator. Cowen stood before the man, asking simple questions.

"What time do you think it is?" he asked.

The man smiled blankly.

"Do you have a watch?" Cowen asked.

The man slowly turned his wrist, stared at his watch and laughed nervously.

At a Reseda nursing home, Cowen met a woman in her late 80s whose conservator was the Office of the Public Guardian, a county agency that takes care of the indigent. The woman, who had no family, had not been visited by a court investigator for three years.

She told Cowen that a deputy public guardian had seen her in recent days and brought extra clothes.

"We're the eyes and ears of the court," Cowen said afterward. "Sometimes we're the only people between the caregiver and the court."

This morning, Cowen's work was routine. No one complained about ill treatment. But Cowen, a 16-year veteran, said he worried about the cases he cannot get to on time.

"A person's bank account could be cleaned out; substantial damage could be done," he said. "We need to go out."

The county recently hired a part-time investigator to work on the backlog. Researching the cases, she found that, unknown to the court, more than 500 people on the waiting list had died.

### **Trust, Not Verification**

A series of scandals in Southern California over the last decade exposed how vulnerable seniors are to unscrupulous conservators. Tellingly, in each case, wrongdoing was unmasked not by the courts but by outsiders.

Rodney Swanson, a Tarzana conservator, looted his clients' assets for years.

His case laid bare a gap in oversight that persists today: Courts do not try to verify conservators' accountings by demanding canceled checks, receipts or other supporting documents. Instead, they take conservators at their word that the reports are truthful and complete.

Swanson's undoing came in 1994, after one of his clients died and he sent a check to a lawyer who was helping wrap up her estate. The \$125,000 check was supposed to represent almost all the money Sylvia Gray left behind.

It bounced.

The lawyer, Susan A. Mitchell, demanded that Swanson turn over his bills and receipts. She discovered that he had taken \$156,000 from Gray's bank accounts without court approval. Swanson shuffled money among his clients' accounts to disguise his thefts.

"He could probably have kept that game up for a lot longer had he not gotten so sloppy," Mitchell said.

Prosecutors accused Swanson of plundering the assets of 55 elderly clients. He pleaded no contest to grand theft and guilty to tax evasion and was sentenced to five years in prison and ordered to repay \$1.1 million.

In a recent interview, Swanson, now a customer service representative, said the court could easily have found out what he was up to.

"They just don't want to deal with it," he said. "If anyone had investigated, it would have been obvious."

Riverside County's probate judge in Indio did investigate suspicions about one conservator. Yet despite mounting evidence of Jeffrey James Walker's wrongdoing, the judge didn't stop him.

Walker, a former Green Beret, opened a Palm Springs conservatorship business in 1995, a year after filing for bankruptcy. Problems soon surfaced.

A nursing home complained that he hadn't paid an elderly ward's bills for two years. Riverside County Superior Court Judge Graham Anderson Cribbs discovered that Walker had taken \$48,885 from a 90-year-old client and lent it to a business partner.

In a 35-page report in which he assessed his options, the judge listed three: "Do nothing. Remove Walker from this case forthwith. Remove Walker from ALL cases he is involved with."

Cribbs grilled Walker about the allegations but allowed him to continue as conservator for six elderly women.

In January 2000, Walker was charged with stealing \$57,000 from Stephani Kraus, an 85-year-old Ukrainian immigrant.

When Walker agreed to plead guilty, he marched into the courtroom of none other than Cribbs, who had moved to criminal court five days earlier.

"Obviously," Cribbs said, "one of the terms and conditions under any such matter is that he is no longer to act as a private conservator in the probate field in this state, period."

Yet Walker remained a conservator. Only when a local newspaper reported his guilty plea did the Probate Court strip him of his remaining cases. He later pleaded guilty to stealing from four other clients and is serving a 16-year prison term.

Cribbs, who is still on the bench, did not respond to requests for comment.

"I think it was a case of paralysis," said Manuel Garcia, a forensic accountant who helped the district attorney prosecute Walker.

"The judge is the one who should have taken the action and done something... I think we need more angry judges."

### **'Very Little Scrutiny'**

It took a crusading attorney from Northern California to initiate action against Bonnie Cambalik, who ran Riverside County's largest conservatorship business.

For years, William H. Sullivan, the county's supervising probate judge, ignored complaints from relatives and warnings from his own court staff that money vanished and jewelry disappeared when Cambalik took over.

Frustrated relatives and friends of Cambalik's wards sent boxes of documents to a group



of elder-rights advocates in San Francisco. Among those who looked at them was local attorney Barbara Jagiello.

Disturbed by what she saw, Jagiello flew to Riverside and copied thousands of court papers from Cambalik's cases. Back home, working at night at her dining room table, she unearthed what appeared to be widespread misconduct.

"I realized how it could be a closed circle," Jagiello said. "If the individuals aren't good, there's very little scrutiny."

Tipped off by Jagiello, district attorney's investigators raided Cambalik's office. They found that she had hidden investments, stolen jewelry and drained bank accounts.

Prosecutors said Cambalik stole more than \$1 million. She pleaded guilty to embezzlement and perjury and is serving a 26-year prison term.

Sullivan was also ensnared in the scandal. Jagiello discovered that he had bought a two-bedroom bungalow from an elderly man whose conservatorship he presided over.

After retiring, Sullivan pleaded guilty to seven misdemeanor counts of financial conflicts involving the house purchase and other misconduct as a judge. He was fined \$27,000.

### **An Arcane World**

Probate Court is a legal backwater, the least glamorous branch of any courthouse.

"No one wants to do it," said Mitchell, the former presiding judge in San Diego. "It's dry and uninteresting, and it's only fuddy-duddy lawyers without color to their skin who do it. That's the public perception of probate law."

The reality is an arcane world of trusts, wills and conservatorships that breeds familiarity among judges, attorneys and conservators. In this atmosphere, the elderly can feel powerless.

Harry Cassel, 80, arrived in Los Angeles' main Probate Court in 1996 with his lawyer, Allan P. Leguay, to fight attempts by his family to have a professional conservator appointed for him.

Relatives and friends insisted that a caretaker was taking advantage of Cassel, who suffered from Parkinson's disease.

Cassel told the court that if he had to have a conservator, he wanted a say in who it was. That was why he had brought along Leguay.

Judge Robert Letteau, then the county's presiding probate judge, said he wanted someone independent to assess the situation. He appointed a second attorney, Thomas B.

McCullough Jr., to represent Cassel and advise the court whether he needed a conservator.

Letteau and McCullough had worked together at the same small law firm for four years in the 1970s.

McCullough recommended a conservator whom Cassel did not want. Letteau made the appointment anyway — without allowing Cassel a jury trial to fight the move. By law, Californians are guaranteed the right to oppose a conservatorship before a jury.

Cassel appealed, using his own lawyer: Leguay. Letteau authorized McCullough to oppose the appeal.

So Cassel had two attorneys on opposite sides of the case and was paying for both of them.

In May 1997, an appeals court overruled Letteau. It criticized him for relying too heavily on McCullough's recommendation and violating Cassel's rights. The court also said it was a conflict of interest for McCullough to oppose his own client's appeal.

Despite the higher court's reversal, Letteau ordered Cassel to pay McCullough more than \$40,000 for his work — nearly a third of it for time spent working against Cassel's successful appeal.

The legal fight ended when Cassel, given the choice he had wanted all along, agreed to have his son and son-in-law act as his conservators.

He died in 2000. Bills from all the attorneys involved swallowed up \$400,000 of Cassel's estate.

Letteau, who now works for a private arbitration firm, defended his conduct. In an interview, he said he was concerned that Cassel had not been mentally fit to choose his own lawyer.

"Sometimes you make decisions that intrude on that person's civil rights," he said, "but you're doing it to protect that person."

Robert L. Conn, who replaced Leguay as Cassel's lawyer in 1997, had a different view.

"The person who took it in the shorts was Harry Cassel," he said. "All Harry ever asked for was a voice. That's all he wanted — a voice in who would be his conservator."

### **An Underused Tool**

Despite the embezzlement scandals in Riverside and Los Angeles counties, proposals to license and regulate professional conservators — most of them supported by conservators themselves — have foundered in Sacramento. Legislators have rejected stringent

enforcement, citing worries about cost and big government. The last three governors have each vetoed more-modest measures.

One bill that did make it into law gave courts a new tool: a statewide registry to track abusive and inept conservators.

Previously, judges could look only at files in their own counties for a history of a conservator's work. Rogue operators could evade accountability by crossing county lines.

Under the law, passed in 1999, probate courts must notify the state each time a conservator resigns or is removed from a case. Courts are also supposed to forward substantiated complaints against conservators.

Of the state's 58 counties, only two — San Diego and Los Angeles — have reported removals.

California probate courts have accepted hundreds of resignations but have reported none to the registry, according to the attorney general's office, which runs the database. Nor have they reported even a single complaint.

Judges must consult the online registry before appointing a conservator. But only 13 counties have applied for passwords.

"The whole theory was to protect [seniors] against these bad actors, and they're not being protected," said Bob Hertzberg, the former Assembly speaker who wrote the law.

In April 2000, three months after the launch of the registry, Riverside County Superior Court Judge Stephen D. Cunnison ruled that conservator Ardis Enright had neglected her responsibility to an 84-year-old with Alzheimer's disease "to a point verging on financial mismanagement."

Neither Cunnison nor his court staff notified the registry.

A year and a half later, Enright was looking for clients in neighboring San Bernardino County. Without access to the registry, Judge Michael A. Smith appointed her to look after 88-year-old Elisa Taylor.

Sixteen months later, Enright was forced to step down when Taylor's attorney complained she had not taken the most basic steps to protect the elderly woman's assets.

Last year, a San Bernardino County judge fined Enright more than \$18,000 for neglecting Allen Caraballo, a 28-year-old man suffering from brain damage. She no longer works as a conservator.

Case closed? Not quite.

The court never reported Enright to the registry.

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*Times researcher Maloy Moore contributed to this report.*

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*(BEGIN TEXT OF INFOBOX)<252>Planning ahead*

*To avoid a conservatorship, or to ensure that someone you trust is put in charge of your affairs, attorneys recommend one or more of the following steps.*

*A durable power of attorney designates someone to manage your finances. It does not have to be drafted by an attorney, but it must be notarized if real estate is involved. If you don't plan on using an attorney, ask for a "statutory" form at stationery stores or look for it on the Internet.*

*An advance healthcare directive authorizes a friend or loved one to make medical decisions for you. A kit for creating one can be ordered through the California Medical Assn. at <http://www.cmanet.org> .*

*An advance nomination designates someone to serve as your conservator if a court deems one necessary.*

*A revocable trust, also known as a living trust, designates an individual to manage your assets outside court jurisdiction while you are alive and after you die, thereby avoiding the cost of probate.*

*Be sure to inform the people whom you have designated to make decisions for you. Give them copies of documents and tell them where originals are filed.*

*Source: California Medical Assn.; Irell & Manella; Mitchell A. Karasov; American Bar Assn.*

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*(BEGIN TEXT OF INFOBOX)*

*A troubled system, modest reforms*

*Periodic embezzlement scandals have sparked proposals for tighter oversight of California's professional conservators. But reform measures have struggled in Sacramento.*

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***Conservators sentenced to prison:***

***Rodney P. Swanson, a Tarzana conservator, was suspended in 1994 after he bounced a \$125,000 check from a client's account. He plundered the estates of 55 clients, authorities said. In 2001, he was sentenced to five years in prison for grand theft and tax evasion and was ordered to repay \$1.1 million.***

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***Jeffrey James Walker, a Palm Springs conservator, was prosecuted twice for stealing from his elderly clients. In 2000, he pleaded guilty to embezzling \$57,000 from one, but continued to work as a conservator. He later pleaded guilty to stealing from four other clients. He was sentenced in 2003 to 16 years in prison.***

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***Bonnie Cambalik, who received 300 court appointments as Riverside County's busiest conservator from 1986 to 1999, stole more than \$1 million in cash, jewelry and other valuables from clients. She pleaded guilty to embezzlement and perjury and received a 26-year sentence.***

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***Fate of reform efforts:***

***1988- Gov. George Deukmejian vetoed a bill to establish a licensing system for professional conservators.***

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***1989- Deukmejian vetoed a bill providing \$50,000 to study the scope of abuses by for-profit conservators and suggest corrective measures.***

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***1996- A proposal to regulate and set professional standards for conservators was watered down to require merely that they protect their wards' rights and dignity. Gov. Pete Wilson vetoed the bill.***

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***1999- Gov. Gray Davis signed a bill creating a statewide registry for probate courts to track inept and abusive conservators.***

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*2000- Gov. Gray Davis vetoed a \$100,000 study of potential regulation of conservators. The provision was all that remained of an ambitious proposal for licensing and regulation.*

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*2004- Gov. Arnold Schwarzenegger signed a bill directing the state Judicial Council to develop educational requirements for professional conservators effective Jan. 1.*

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*Sources: Times reporting*

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*On the Web*

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**GUARDIANS FOR PROFIT**

## **Missing Money, Unpaid Bills and Forgotten Clients**

**Anne L. Chavis, a churchgoing nurse, had sweeping power over wards' lives. It took years for the VA and others to rein her in.**

By Evelyn Larrubia, Jack Leonard and Robin Fields  
Times Staff Writers

November 15, 2005

At the end of the month, her money dwindling, Carolyn Osterhout would survive on