

**50 YEARS OF PASSION IN THE PIT** Re-live the highlights from UNM's beloved shrine to basketball. **SPORTS >> C1**

NEW MEXICO'S LEADING NEWS SOURCE  
**THE SUNDAY JOURNAL**  
ABQJOURNAL.COM NOVEMBER 27, 2016 \$2.00 FINAL \*\*\*\*\*

**JOURNAL INVESTIGATIVE REPORT**

**WHO GUARDS THE GUARDIANS?**

System designed to protect the elderly can tear families apart

**EDITOR'S NOTE:** Investigative journalist Diane Diamond, whose weekly syndicated column on crime and justice appears in the Journal, is preparing a book on the nation's elder guardianship system. It's a system designed to protect the elderly from the unscrupulous. But as Diamond discovered, it can be dominated by a core group of court-appointed, for-profit professionals who are accused of isolating family members and draining the elderly's estates. New Mexico is no exception.

**THIS IS THE FIRST INSTALLMENT OF A FIVE-PART ALBUQUERQUE JOURNAL SERIES.**

**BY DIANE DIAMOND**  
ALBUQUERQUE JOURNAL

**O**n the late afternoon of Jan. 8, 2010, Mary Darrell took in her small ranch home in Albuquerque's bosque, installing a cousin who was jangling her sales pitch for Great Lakes. Mary, one of four Darrell children, had moved back to the 17-acre horse ranch where she had grown up to become the on-site caretaker for her 73-year-old mother, Blaise Darrell, who had been experiencing memory problems.

As the cousin wrapped up her cutsey presentation, Mary noticed several cars parked in front of the large home where her mother lived about 500 feet away. Bracing the cold, Mary then headed out to check on her mother and see who had come to visit. What she encountered would change their lives forever.

In her mother's house, around the kitchen table, sat a group of unfamiliar women from an elder care company called Decades LLC.

"All these people were walking around (Mother's) house looking at everything, and I thought, this is weird," Mary said. "They had no idea what the woman was talking about, but among the group of strangers in the room she saw a familiar face. Mary remembers the moment precisely. "My older sister, Kris, was there, and I was like, 'What have you done?'"

Unknown to the rest of the Darrell family, Mary said, a woman named Nancy Oxley from Decades told her there had been a court hearing and (Mother) was being put under temporary guardianship and conservatorship.

Mary said she had no idea what the woman was talking about, but among the group of strangers in the room she saw a familiar face. Mary remembers the moment precisely. "My older sister, Kris, was there, and I was like, 'What have you done?'"

Unknown to the rest of the Darrell family, Mary said, a woman named Nancy Oxley from Decades told her there had been a court hearing and (Mother) was being put under temporary guardianship and conservatorship.

**\$282 IN COUPONS IN TODAY'S JOURNAL**  
**\$5,003 IN COUPONS THIS YEAR**

**2 more fires set at businesses; 1 in custody**

Suspect caught after Old Navy, Barnes & Nobles damaged early Saturday

**BY PHIL MARTINEZ AND ELLIE KAPLAN**  
JOURNAL STAFF WRITERS

A suspect in an FBI custody after several fires were set and "suspicious devices" were left at three Starbucks coffee shops and a business over the past two days in central Albuquerque.

"We believe that our community is now safe from any type of action like this again," Police Chief Gordon Eden said during a Saturday news conference.

Early Friday, "suspicious devices" were left at three Starbucks coffee shops in Nob Hill and a nearby neighborhood. And 24 hours later an Old Navy clothing store and a Barnes & Noble bookstore were set on fire and the south squad unit was sent to a third business.

Backed by about a dozen anti-farmer officers, Mayor Richard Berry and Chief Eden addressed the media in front of a broken window at the Old Navy on Saturday afternoon.

"It has been a difficult 48 hours in Albuquerque," Berry said. "We have had multiple fires around the city that have attacked multiple businesses."

Although the suspect has not been formally charged, Eden said authorities aren't looking for any other suspects in the case.

He said the FBI had asked him not to release any information about the case or the suspect.

**Partisan reaction in NM to Trump's Cabinet picks**

**Descriptions of nominees range from 'troubling selections to 'best leaders'**

**BY MICHAEL COLEMAN**  
ALBUQUERQUE JOURNAL

WASHINGTON — President-elect Donald Trump's Cabinet picks — at least so far — are getting amiable reception from Democrats in New Mexico's congressional delegation, but the state's top Republicans say "Trump is making solid leadership choices for the nation."

It's been almost three weeks since the Republican political porke stunned the world by defeating Democratic establishment candidate Hillary Clinton in the Nov. 8 election. Since that time, Trump has begun to finish out his Cabinet and top White House appointments. Some of his picks, such as former Breitbart News editor Stephen Bannon — accused by some of making white nationalist fervor at the conservative website — drew harsh and immediate criticism from Democrats nationally and in New Mexico.

Bannon was an assistant to the chief of naval operations and a Goldman Sachs investment banker before launching his own bank and then a career in the media industry. Bannon has denied that he is racist or anti-Semitic.

Democrats have also denounced Trump's appointment of Jeff Sessions to serve as U.S. attorney general. Sessions is a long-serving Republican mem-

INSIDE CLASSIFIEDS >> D1 | COMICS >> INSIDE | EDITORIALS >> A10-11 | DIMENSION >> B10 | OBITUARIES >> B3 | PUZZLES >> B7, D2 | TV >> B8 | WEATHER >> B8  
Weatherline 825-1111 | ABQJournal.com | Copyright © 2016, Journal Publishing Company

**SANDIA Resort & Casino**

**PASSPORT TO RICHES**

12 Hours of HOT SEATS  
12/31, 1pm - 4am 01/01  
**THREE \$1000 CASH Winners every hour**

Join us as we celebrate NYE across the globe!

A6 THE SUNDAY JOURNAL

ALBUQUERQUE, NOVEMBER 27, 2016

# Families: System can harm rather than protect elderly

FROM PAGE A1

family, Kris Darnell-Kreger's attorney, Gregory MacKenzie, had filed an emergency petition with the court two days earlier. In it, MacKenzie asked District Judge Beatrice Brickhouse to appoint professional outsiders to handle Blair Darnell's affairs as an attorney to look out for the elderly woman's personal protection and a financial conservator to control her estimated \$10 million estate.



Kris Darnell-Kreger

MacKenzie alleged both financial and medical emergencies, primarily against Mary Darnell, as reasons for court intervention. A review of the court docket from that time period does not list an actual hearing being held.

The next day, Jan. 7, 2016, Judge Brickhouse signed an order granting the appointments section cites to law to substantiate the need for an emergency intervention or for a full court hearing would not be held for nearly six weeks. Nonetheless, according to court documents reviewed by the Journal, Blair Darnell was already being referred to as an "adult incapacitated person."

On Feb. 16, Mary Darnell, two of her other siblings and their mother went to that initial hearing to try to understand what was happening. None was allowed to address the court to defend against the allegations made in MacKenzie's petition. The siblings' motion to remove the temporary guardian and conservator so they could continue to care for their mother was denied. At that hearing, Mary Judge Brickhouse received recommendations from her three temporary appointees and without speaking directly to Blair Darnell or any of her children made the temporary guardianship arrangement.



Nan Nash

District Judge Nan Nash, chief of the 2nd Judicial District Court in Albuquerque, responded to written questions from the Journal about the initial steps in the guardian system. Asked whether a judge requires a petitioning attorney to substantiate allegations made against family members,



Judge Beatrice Brickhouse granted a petition to appoint professional outsiders to handle Blair Darnell's affairs.

she wrote, "The guardianship petition is not taken at face value. The statutory framework includes precautions to keep that from happening. Asked under what circumstances a judge decides the potentially incapacitated person's best interests are best served by an incapacitated person's privacy. Each order guardianship case that goes before a judge is routinely 'scrutinized,' meaning no court records are available for public inspection and all court proceedings are closed to the public.



Mary Darnell

Most of the regular network of attorneys who represent their clients and no witnesses or parties to the proceedings are allowed to speak about what has occurred in court. If they do, they face the threat of contempt of court charges, hefty fines and even jail. One woman says she was fined \$3,000 for continuing in a friend about the requested guardianship case in which she was involved.

Lawyers who speak about a particular case face disciplinary action. A complete picture of what happens to the elderly after they enter this system is difficult to piece together without access to public documents. Therefore, the story can be told only through those family members and attorneys who dare to break the wall of secrecy.

**Complex web**  
In multiple cases reviewed during a 10-month investigation, a complex web of legal maneuvering surfaced. Family members said that once the guardianship system got underway, the situation was both intimidating and overwhelming. "They were of a loss as to what kind of lawyer to hire. They felt powerless to stop the domino effect of the system on their elderly parent. Many complained that their loved one was kept isolated by court appointments and that visitations were curbed or supervised. They claimed family members were often unfairly labeled as scheming and money-hungry or "in conflict" with one another and, therefore, untrustworthy.

Some of the same-for-profit professionals figure prominently in the stories told by those willing to speak. A handful of judges have these guardianships, usually on behalf of a brother or sister who is squabbling with siblings about what is best for their aging parent. Those lawyers, in turn,

recommend the court appoint from the same limited pool of guardians of assets, permanent guardians, conservators, trustees, psychological evaluators and what are called court visitors.

In the cases examined by the Journal, judges routinely agreed to the recommendations of the petitioning attorney. The appointees are given almost absolute power to decide how the elderly wards spend their final days and how their estates — often valued in the millions — are handled.

Truly in a cottage industry, said one Albuquerque legal insider with knowledge of the system, adding that the fees charged by these professionals "is outrageous." That lawyer, and several others, spoke on the condition of anonymity, fearful their pending and future cases might be jeopardized if they spoke openly.

Another New Mexico attorney who represents families trying to navigate the process, but who is not among the usual network of lawyers attached to these cases, said, "It's like the Soviet Union circa 1935. The secrecy is so oppressive."

One lawyer who recently finished a long, complicated guardianship case in Albuquerque said he was appalled at how this part of the court system operates. "I would characterize it as a waste of time," he said. "There's a very different way of doing things than any other I've ever seen in a courtroom."

**No checks and balances**  
"The courts are often the destination of last resort for family members fighting over power of attorney, estate matters or simply what to do with Mom or Dad. But even only children simply looking for legal status to conduct an elderly parent's financial affairs have become stuck in this secretive system. What they often find is an insupportable nightmare that can last for years and can continue well after their loved ones have died.

One retired Albuquerque attorney told the Journal that a family member had, in his words, "kidnapped" his now-deceased mother, overcontrolled her and forged documents to take control of her estate. He says he sought advice from a lawyer with expertise in the guardianship-estate overlap and that attorney, he warned him away from asking for a court's help. "I discovered ... there are no checks and balances," he said.

"It's whatever the lawyers can get and grab. They just keep billing (and) ... don't care if you report them to the ethics board." Desperate to help his mother during her final days, the attorney said, he went to District Attorney Kari Brumbaugh. He said she told him the case was "too complicated" in person, and he then turned to the state's top law enforcement officer. The office of Attorney General Hector Balderas looked into the complaint and responded with a completely redacted conclusion and a letter that said the AG lacked jurisdiction.

The letter went on to say the AG's office is "aware of the number of exploitation cases

See LAWYER >> A7

## In many cases, guardians meet a need

Professionals who are regular participants in New Mexico's guardianship or conservator court system say they are a necessary part of protecting the wishes of the elderly from unscrupulous or abusive relatives and outsiders.

To be certain, there are many elderly people who are unable to fend for themselves, have no close relatives and need a court-appointed guardian relationship.

Both Prager, whose law firm deals extensively with older issues, told the Journal, "Guardian and conservatorships have grown up to meet a need," a reference to the aging baby boomer generation. "We're not living anymore in a society where families take care of each other," she said. "Often times, families are all over the country."

There are many kind and trustworthy lawyers, guardians, conservators and caretakers who operate with compassion and good intentions within New Mexico's elder care system. In addition, cases involving elders often include courtroom discussion of their mental competence and medical conditions that must, under law, be kept confidential.

As for some families' contention that there is a cottage industry of fee-arrest professionals who control much of the business within a tight-knit group, Nancy Orsila, CEO of elder care firm Decades LLC, told the Journal, "I believe that the professionals who offer Decades make a conscious effort not to engage in the activity you describe."

"We rotate the work of all professionals we hire — be it attorneys, Realtors, caregiving agencies, estate liquidators, etc.," she said. According to a 2013 task force report prepared for the New Mexico Senate, there could be as many as 100 guardianship and conservatorships active in the state courts.

During an interview in her chambers recently, 2nd Judicial District Judge Shannon Bacon indicated the number is much higher. Referring to the 10th circuit court judges who handle those cases in Albuquerque, Bacon said, "Eight of the 10 have over 1,000 (total) cases each."



DIANE DIMOND is an Albuquerque native and recipient of the American Bar Association's Silver Gavel Award. She has covered some of the nation's biggest stories — including the murder of JonBenét Ramsey, the Michael Jackson case and the Bush-Gore election recount in Florida — in a career that has included Court TV, MSNBC and the "Today" show. She is the author of three books on the criminal justice system. Dimond's column on crime and justice appears in the Journal every Saturday.



The Darnells' home in the Albuquerque bosque is where Casey and Blair Darnell raised their four children, Kris, Cliff, Emily and Mary.

THE SUNDAY JOURNAL

## Lawyer says system is last resort

From PAGE A6

Involving family members that occur outside the facility-exploitation context and agree that it is an issue of importance."

### Defending the system

Trust and estate litigation specialist MacKenzie, who initiated the Barrett guardianship, has extensive experience in the system. He said he could not discuss any particular case but told the Journal, "I think the system is not perfect. You know, most systems aren't, and there's certainly need for improvement. But the policy and the law is to impose a guardian and conservator only when it is really a last resort and under the least restrictive means." MacKenzie says it's the only way to truly protect an elderly person who is surrounded by a dysfunctional home environment.

But complaints from a growing number of New Mexico families cannot be ignored. They vigorously disagree that New Mexico courts impose guardian and conservatorship only as a "last resort" or that they are the "least restrictive" possible. They question what the frequently used "dysfunctional" label really means. Family members are particularly angry about secretive initial hearings at which they say they were unfairly demonized and not given a chance to rebut inflammatory allegations. Several adult children told the Journal they petitioned the court for the right to continue to care for their aging parent only to be told it was too late to change the judge's order.

Costly lawyers must be hired by the children of wards if they want to contest the ruling, but lawyers who spoke with the Journal said such challenges are rarely successful. Relatives also complained that their loved one's doctors and familiar service providers were routinely dismissed and replaced by hired strangers, causing anxiety and isolation for the elderly person. All the family members who spoke to the Journal claimed they were routinely bullied by court appointees who twisted their words and actions into something sinister, finding family conflict and dysfunction at every turn. Perhaps most perplexing to these adult children is how their parent's well-thought-out retirement preparations were ignored. Wills, trusts, powers of attorney and other carefully compiled legal documents reviewed by the Journal were, in effect, overridden by the for-profit guardians and conservators, according to family members.

Though the documents were drawn up years earlier when the ward was of sound mind and body, the court appointees are allowed to disregard them. Guardians and conservators alone decide what should be spent, on what and when.

### TOMORROW Part 2: Follow the Money

Pulling the curtain back on what families call "court-sponsored robbery."

ALBUQUERQUE JOURNAL