

I'm a Slave 4 U: #FreeBritney, Human Rights, and Capacity Assessments

“Framing Britney Spears,” Episode 6 (75 minutes), and “Controlling Britney Spears,” Episode 9 (70 minutes), of *The New York Times Presents*, available streaming to *New York Times* and Hulu subscribers, February and September 2021, respectively. Produced and directed by Samantha Stark.

Reviewed by Michelle T. Joy, MD, and Kenneth J. Weiss, MD

DOI:10.29158/JAAPL.220024-21

Key words: guardianship; trafficking; disability; conservatorship; capacity

The term “conservatorship” (also known as guardianship) has crept into public consciousness via pop singer Britney Spears’s high-visibility struggle to get out from under one. Ms. Spears, 40, mother of two, was declared incapacitated at age 26 but continued to perform and be financially productive. “Framing Britney Spears” shows her early attempts to end the conservatorship that has controlled her money, personal decisions, social life, medical treatment, and reproductive rights. “Controlling Britney Spears” documents the interactions between the conservatorship and the private security agency that monitored her. These dynamics have been accompanied by a growing social movement, #FreeBritney, whose stated mission is advocating for the end of Ms. Spears’s conservatorship. The movement accelerated in 2019, after she was put under an involuntary psychiatric hold, the details of which are unknown. The episodes track the movement and events behind Ms. Spears’s situation. We believe there are implications for how forensic professionals handle such assessments.

At the center of the controversy has been Ms. Spears’s father Jamie Spears, whom she portrayed as the enemy in court testimony:

The control he had over someone as powerful as me — he loved the control, to hurt his own daughter, one hundred, thousand percent. He loved it. I packed my bags and went to that place. I worked seven days a week, no days off, which in California the only similar thing to this is called

sex trafficking, making anyone work, work against their will, taking all their possessions away — credit card, cash, phone, passport card — and placing them in a home where they work with the people who live with them. They all lived in the house with me — the nurses, the 24-7 security. There was one chef that came there and cooked for me daily, during the weekdays. They watched me change every day — naked — morning, noon, and night. My body — I had no privacy door for my room. . . (Ref. 1, p 7)

The performer’s argument to terminate conservatorship analogized her situation to sex trafficking. Under federal law, trafficking of persons is grouped with slavery and peonage (debt servitude).² Human trafficking, as a general concept, involves the exploitation of humans through use of threat, force, abuse of power, position of vulnerability, or payments or benefits to achieve control over another person.³ Exploitation can include sex, forced labor or services, or organ procurement. Definitions and legal status have largely been established by the United Nations Convention Against Transnational Organized Crime (known as the Palermo Protocol) and its supplementary Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, signed by United Nations participatory nations in 2000.⁴ Women and girls together make up 70 percent of trafficking victims, of which more than 80 percent are sexually exploited.⁵ Victims may be trafficked within their country of origin, by known persons, without being physically held, and in otherwise legal industries.⁶ As the filmmaker’s #FreeBritney subjects assert, their idol has been working as a slave.

The United States signed both the Palermo Protocol and the supplementary protocol in 2000, but Ms. Spears would not have recourse in conservatorship litigation. Anti-trafficking organizations have taken note of her statement.⁵ Without affirming her claim, the Polaris Project writes that “the degree of financial and personal control Spears described **resembles the forms of control and coercion tactics used by traffickers in situations of labor trafficking**” (bold in original).⁶ It also provides a list of other Spears-arrangement factors that resemble human trafficking, as noted in her testimony: taking advantage of legal loopholes, physical and emotional isolation, exploitation of mental illness, constant surveillance, withholding of money and identity documents, and coercive contracts. Even conservative news

media have supported her claim, with *The View*'s Meghan McCain stating, "If she were any other person not named Britney Spears, this is a human trafficking issue and should be treated as such" while calling for FBI involvement.⁷

Ideally, the conservatorship would be terminated when Ms. Spears regains capacity. A proposed alternate legal remedy for persons such as Ms. Spears is available through the Trafficking Victims Protection Act (TVPA) of 2000 (updated most recently in 2017).⁸ Section 213 requires the Secretary of Health and Human Services and the Attorney General to have assistance programs for trafficked United States citizens, while other sections provide accordant penalties for traffickers. A model state law was approved by the 2013 annual meeting of the American Bar Association House of Delegates (though the legislation has not yet been enacted by California). The Reauthorization Act of 2013 (TVPRA)⁸ provides for human trafficking to be charged under the Racketeering Influenced and Corrupt Organizations Act (RICO) and allows for victims to sue their traffickers. Ms. Spears has in fact mentioned wanting to sue her family.¹

In parallel, California legislators have been moved to rethink conservatorship along the lines of rights of the disabled.⁹ Ms. Spears, meanwhile, had been living under conservatorship since the original temporary assignment in 2008 following two psychiatric holds relating to odd behaviors under pressure from paparazzi and a custody dispute. The documentaries explore how the public viewed the unraveling of a closely scrutinized young adult whom the misogynistic world expected to function according to its high expectations yet drove her to do otherwise. Her subsequent behaviors have been largely controlled by her father, as she is assumed unable to manage herself and her affairs. Guardianship aims to protect the conservatee's decisions or finances. Ms. Spears's conservatorship is responsible for both; it is plenary. She has claimed that her ability to manage a grueling work schedule and even teach her dancers the choreography for performances speaks to her capacity.¹⁰ There are supposed to be mechanisms in place for review of conservatorship, but they are largely left to the court to pursue independently. Under California procedures, Ms. Spears was presumed incompetent to choose her own attorney but bore the burden of obtaining

counsel to make arguments for termination, which she was doing at the time of writing. Conservatorships, as usually applied to older adults, are expected to be permanent.¹¹ The outdated nature of California's and other states' guardianship laws in relation to contemporary views of autonomy and disability were highlighted in a recent symposium at the National University of Ireland-Galway.¹² It appears that nations which have moved disability rights into focus have embraced international accords.

Given the tight control over her behaviors and communications, the public knew little about her arrangement throughout the years. This silence largely changed with the first documentary, which was followed by continuous *New York Times* coverage and a *New Yorker* article,¹³ the singer's own testimony in *Variety*,¹⁴ and general media, public discussion, and legal commentary.¹² Many of those who may not have taken her claims of human trafficking seriously nonetheless began to question the arrangements of her conservatorship in articles, interviews, podcasts, and panels. #FreeBritney adherents have supported her testimony, asking how Ms. Spears remained under a conservatorship as a functioning woman who has been working nonstop. They have pointed to financial exploitation, given Ms. Spears's massive estate from which she pays the very people who control her life. Her assistant, Felicia Culotta, who was marginalized by the management team, describes Ms. Spears's abilities and her own doubt about the conservatorship. Jamie Spears's attorney, Vivian Lee Thoreen, explained in the film that a conservatorship could prevent an impaired person from being duped into giving away money.

The #FreeBritney movement has questioned the seeming cruelty of California's laws, but they are merely a barometer of American disability law. While the United States has signed on to conventions against human trafficking, it has remained fundamentally silent on the rights of disabled persons, and one of the only countries that has not signed on to the 2008 United Nations Convention on the Rights of Persons with Disabilities (CRPD).¹⁵ The purpose of the CRPD is to protect full human rights, freedoms, and dignity of persons with disabilities by granting them participatory involvement in the policies that affect them. It operates from an empowering disability lens rather than through an authoritarian medical model. Accordingly, even when disabled persons' decisions

may be compromised, they must be able to access support for them from a substituted decision-making perspective, not a best-interests standard. Jamie Spears's attorney, in the film, lauds acting "in the conservatee's best interest." Even Ms. Spears's new attorney, Mathew Rosengart, in the "Controlling" episode, insists that his client's best interest be acknowledged, rather than a rights-forward position.

Without the ability to refer to the CRPD, states have retained a panoply of approaches to guardianship. Other countries, such as Costa Rica and Peru, have changed or abolished their conservatorship mechanisms altogether.¹² California has one of the most conservative sets of guardianship policies in the United States.¹⁶ By contrast, articles of the CRPD include rights to owning property, living independently, marriage and reproduction, education, and health, among others (CRPD).¹⁵

The incongruence between California and the CRPD has been wedged open by stigma against the inclusion of disabled persons in decisions that concern them. While less restrictive options to conservatorship should be exhausted before appointment, they are rarely reviewed or even considered. Legal advocates have called for enactment of supported decision-making to buttress, rather than exclude, legal capacity.¹⁷ Other mechanisms include health care proxies, advanced directives, powers of attorney, notarized statements, and representation agreements.¹⁸

The documentaries are relatively one-sided, in that interviewed parties are vocal #FreeBritney advocates, while court representatives and mental health providers maintain appropriate confidentiality. In the "Controlling" episode, however, insiders' comments support Ms. Spears's claims. Psychiatrists are accustomed to suggesting less restrictive levels of clinical care, and forensic testimony could and should review less authoritarian attempts at supported decision-making. Recommendations would include possibilities to try before plenary guardianship is enacted, as well as the ways in which they could aid decision-making and maintain capacity. If these avenues are unlikely to be effective, they should nonetheless be presented and thoughtfully considered. Further, forensic psychiatrists can be involved in reviews of existing conservatorships rather than leaving the process solely to internal procedures of the courts. In these ways, psychiatrists can be disability advocates while staying well within their professional roles. In our view, a voice is needed given the fact

that attempts to detail the extent of abuse of guardianship have been inconclusive because of lack of data.¹⁵ That media attention may have led to the accomplishment of many of #FreeBritney's aims by the time of this writing speaks to just how effective forensic psychiatry may also be in raising corresponding ethics and procedural concerns.

References

1. Jacobs J, Bahr S. The Britney Spears transcript, annotated: 'Hear What I Have to Say.' 2021. Available from: <https://www.nytimes.com/2021/06/24/arts/music/britney-spears-transcript.html>. Accessed July 12, 2021
2. 18 USC Ch. 77: Peonage, slavery, and trafficking in persons
3. United Nations Office on Drugs and Crime. United Nations convention against transnational organized crime and the protocols thereto. Available from: <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>. Accessed September 13, 2021
4. United Nations Human Rights Office of the High Commissioner. Protocol to prevent, suppress and punish trafficking in persons especially women and children, supplementing the United Nations convention against transnational organized crime 2000. Available from: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>. Accessed September 13, 2021
5. United Nations office on Drugs and Crime. Global report on trafficking in persons – 2020. 2021 Feb. Available from: <https://www.unodc.org/unodc/en/data-and-analysis/glotip.html>. Accessed September 13, 2021
6. The Polaris Project. Is Britney Spears a trafficking victim? 2021. Available from: <https://polarisproject.org/blog/2021/07/is-britney-spears-a-trafficking-victim/>. Accessed September 13, 2021
7. Ortiz A. Meghan McCain Calls on FBI to Rescue Britney Spears: 'this is a human trafficking issue' (Video). The Wrap; 2021. Available from: <https://www.thewrap.com/meghan-mccain-fbi-britney-spears-human-trafficking-conservatorship/>. Accessed September 13, 2021
8. American Bar Association Center for Human Rights. Human trafficking legislation. Available from: https://www.americanbar.org/groups/human_rights/human-trafficking/trafficking-legislation/. Accessed September 13, 2021
9. Levin S. After Britney Spears testimony, lawmakers push changes to conservatorship laws. The Guardian; 2021. Available from: <https://www.theguardian.com/law/2021/jul/02/britney-spears-court-testimony-conservatorship-reform>. Accessed July 12, 2021
10. Grady C. Britney Spears speaks: "I'm so angry it's insane." Vox; 2021. Available from: <https://www.vox.com/culture/22547857/britney-spears-speaks-court-testimony-conservatorship-free-britney>. Accessed September 13, 2021
11. Heisz K. Beware of the con in conservatorships: A perfect storm for financial elder abuse in California. National Academy of Elder Law Attorneys; 2021. Available from: <https://www.naela.org/NewsJournalOnline/OnlineJournalArticles/OnlineMarch2021/Conservatorships.aspx?subid=1191>. Accessed May 12, 2022
12. Flynn E. #FreeBritney and human rights law: the right to legal capacity. 2021. Available from: <https://www.youtube.com/watch?v=BoUgLoG1j9k&t=36s>. Accessed September 13, 2021
13. Farrow R, Tolentino G. Britney Spears's conservatorship nightmare. The New Yorker; 2021. Available from: <https://www.newyorker.com/news/american-chronicles/britney-spears-conservatorship-nightmare>. Accessed July 6, 2021
14. Aswad J. Read Britney Spears' full statement against conservatorship: "I am traumatized." Variety. 2021. Available from:

- <https://variety.com/2021/music/news/britney-spears-full-statement-conservatorship-1235003940/>. Accessed July 6, 2021
15. United Nations Department of Economic and Social Affairs. Convention on the rights of persons with disabilities (CRPD). 2008. Available from: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>. Accessed September 13, 2021
 16. Cal. Probate Code. Division 4. Guardianship, conservatorship, and other protective proceedings [1400–3925]. Part 3. Conservatorship (Effective January 1, 1996)
 17. Glen KB. Introducing a “new” human right: Learning from others, bringing legal capacity home. *Colum Hum Rts L Rev*. 2018; 49(3):1–98
 18. The Arc, California. Autonomy, decision-making supports, and guardianship. Available from: <https://thearca.org/info-resources/conservatorship/>. Accessed September 13, 2021

Disclosures of financial or other potential conflicts of interest: None.

It’s Not Always Depression: Working the Change Triangle to Listen to the Body, Discover Core Emotions, and Connect to Your Authentic Self

By Hilary Jacobs Hendel, LCSW with foreword by Diana Fosha PhD. New York: Spiegel & Grau; 2018. 298 pages, Hardcover list price: \$28.00

Reviewed by Joshua Griffiths, MD

DOI:10.29158/JAAPL.220025-21

Key words: psychotherapy; psychodynamic; psychopathology; shame; trauma; emotion

In *It’s Not Always Depression*, Hilary Jacobs Hendel seeks to distill accelerated experiential dynamic therapy (AEDP) into an easy-to-read guide for both patient and therapist. A major tenet of AEDP is the recognition that often the patient’s initial complaints of depression or anxiety are inhibitory or secondary emotions. These secondary emotions arise from defenses against “core emotions” that have not been fully processed or experienced because of perceptions that they are invalid, too overwhelming, or not socially acceptable. Core emotions can be things like fear, anger, sadness, disgust, joy, excitement, or sexual excitement. The therapist’s goal is to help the patient identify

inhibitory emotions, trace them to their sources earlier in life, and physically experience the underlying core emotion.

AEDP is a therapeutic modality that was developed by Diana Fosha in the early 2000s that draws upon principles of psychodynamic therapy by acknowledging intrapsychic and childhood etiologic forces in the development of adult psychopathology, particularly affective and interpersonal problems. AEDP goes beyond the intellectual exercise of traditional dynamic therapy by placing emphasis on in-session vulnerability and the physical experience of defended-against affect within the supportive dyadic relationship with a therapist. It posits that as true emotions are physically felt, described, validated, and interpreted within the supportive therapeutic relationship, inherent human “transformation strivings” are catalyzed to bring about enduring healing. It also draws upon techniques from dialectical behavioral therapy (DBT), cognitive processing therapy (CPT), and exposure with response prevention (ERP), to name a few, in eliciting cognitions and underlying affect and tolerating and metabolizing this affect.

Hendel begins her presentation of AEDP with a visual aid she calls “The Change Triangle,” a representation of how defenses generate inhibitory emotions like shame, guilt, and anxiety that block the experience and processing of core emotions like anger, fear, disgust, sadness, excitement, and sexual excitement. She describes how circumventing defenses and processing core emotions leads to what is termed the “Openhearted State of the Authentic Self” (somewhat analogous to the “Wise Mind” of DBT.) She then discusses how these defensive patterns have their basis in trauma. She uses an expanded definition of trauma which she categorizes as both “Small t Trauma” and “Big T Trauma,” indicating that for the basis of healing, the objective severity of any trauma is less important than the degree to which it affected enduring patterns of pathology. She does well to avoid reducing all psychopathology to bad parenting or passing moral judgment on well-intentioned but misguided parent–child interactions of the past. She nevertheless appropriately acknowledges childhood trauma of many varieties as fertile therapeutic ground for understanding patterns of adult dysfunction. She even goes so far as to invite her clients to “self-parent,” utilizing their now adult perspective to