Title
Protective services and the elderly

Author
Dignum, Kirk A.

Publication Date
1982

Peer reviewed|Thesis/dissertation

PROTECTIVE SERVICES AND THE ELDERLY: AN ETHNOGRAPHIC COMPARISON OF COMMITMENT AND PROBATE COURTS

by

Kirk A. Dignum

DISSERTATION

Submitted in partial satisfaction of the requirements for the degree of

DOCTOR OF PHILOSOPHY

in

MEDICAL ANTHROPOLOGY

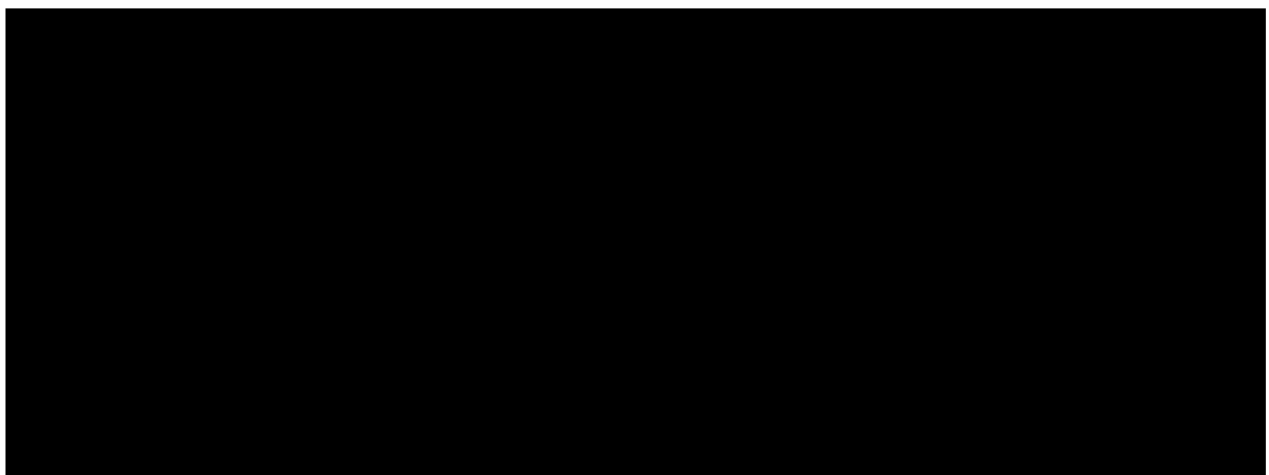
in the

GRADUATE DIVISION

of the

UNIVERSITY OF CALIFORNIA

San Francisco



Date University Librarian

Degree Conferred: . . . . . DEC 31 1982 . . . . . .

THIS IS A JOINT DEGREE

UNIVERSITY OF CALIFORNIA, BERKELEY WITH
THE UNIVERSITY OF CALIFORNIA, SAN FRANCISCO

by

ABSTRACT

Protective Services and the Elderly: An Ethnographic Comparison of Commitment and Probate Courts

While all societies practice some form of social control over those individuals who display an abnormal degree of mental or physical impairment, considerable diversity exists among cultures in the specific methods employed in caring for those who do not or cannot conform to community norms. This research is an ethnographic study of protective services in contemporary American society. More specifically, the study compares two California Superior Courts--Probate and Commitment--both of which have the power to withdraw basic civil liberties from citizens judged incapable of self-determination.

Special consideration is given to the plight of elderly individuals who become enmeshed in protective service proceedings: the study examines the ways in which the choices and options available to the aged are influenced by institutions (courts, hospitals), professionals (judges, doctors, social workers), community norms, and public attitudes toward the mentally and physically frail, and most importantly, family and social networks. The research indicates that the process by which professionals choose among

or design appropriate intervention programs on behalf of the frail elderly is undermined by a number of legal and social obstacles which are built into the present protective service system - obstacles which create at least three distinct classes of older persons in need of protective services of one type or another. First, those who are seriously disturbed, regardless of social or economic status, have access through Commitment Court procedures to psychiatric services. Second, persons who have money and/or a viable social support network--regardless of mental status--have access to Probate Court, thus allowing them, with the addition of court-provided services, to remain in the community. A third group, however, lacking funds, family and friends, have no access to Probate Court, despite their relatively intact mental status; these older people either go without needed protective services or are forced into the Commitment Court system which has neither the expertise nor resources adequately to deal with the social, mental and physical health problems which these elderly present.

TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

ACKNOWLEDGMENTS

This manuscript would not have been possible without the generous cooperation of my family. Their understanding, humor, and acceptance were responsible for the completion of this study.

This study was made possible by the support provided by the Department of Medical Anthropology, University of California, San Francisco, and the Department of Anthropology, University of California, Berkeley. Partial support was also received from the Department of Health and Human Services, Administration on Aging, Grant No. 90-AT-2018/01.

I am also indebted to Professor M. Margaret Clark, who chaired the dissertation, for her professional comments and criticism; to Professor Harry F. Todd, Jr., for his zealous interest and support from the inception of the project; and to Professor Elizabeth Colson, who in the process of contributing to this study, taught me what it means to be an anthropologist. It is with sincere gratitude that I thank my committee for their support, encouragement, and understanding.

Several others have been closely connected with this study: Dr. Linda Mitteness, who assisted with the

statistical compilation and research methodology; Dr. Karen Wood, my editor who made invaluable contributions to the manuscript; and Claudia Hanson, who graciously allowed me the time to pursue my goal.

I am especially appreciative of my friends and colleagues who played important roles in supporting my work, and being available when I needed them. In this regard I wish to thank Terry Haynes, Dr. Charlotte Weaver, and Dr. Robert and Mrs. Karen Crane.

Most of all, I am indebted to my informants. While I have promised anonymity to these individuals and cannot mention them individually, I am extremely grateful for their contributions of time, knowledge and expertise.

INTRODUCTION

All societies practice some form of social control over those individuals who display an abnormal degree of mental or physical incapacity. As Black points out, "Whether known as madness, magical fright, or mental illness, conduct defined and treated as abnormal is subject to many kinds of social control" (1976:119). However, considerable diversity exists from culture to culture in the specific methods employed in caring for those individuals who do not or cannot conform to the norms of the community. (See, for example, Field's 1960 study in Ghana and Selby's 1974 study of the Zapotec Indians of Mexico.)

In most instances, and our Western society is no exception, this control is most frequently administered by kith and kin. The principal responsibility for protecting and watching over the debilitated person, regardless of whether the debility is physical, mental, or both, rests with the family, even though the degree and nature of family support may vary from culture to culture. In rare instances, however, the burden of caring for the vulnerable individual falls totally outside the family. For example, if such an individual has no family to shoulder the task, or if the problem is of such a complex nature

that the family is unable or unwilling to provide care, the primary responsibility may pass to a non-family member, or even to the State.

Most cultures, but not all, rely on laws to assist and to regulate the activities of the mentally frail, those individuals whom society has judged to be incompetent to care for their own persons or estates. In those instances in which familial care is unavailable or inappropriate the fate of the mentally or physically disabled may become a matter of law. Laws, as we perceive them, are formal codifications of the rules of society which are supported by governmental social control. (See Radcliffe-Brown 1933; Pound 1939; Redfield 1964; Black 1972.) More importantly, however, laws should, and in most instances do, reflect the attitudes and beliefs of the people who make them (Llewellyn and Hoebel 1941; Black 1976). Thus, laws designed to aid and govern the mentally or physically infirm must not be viewed as sui generis, but rather, as integral reflections of the social and cultural milieu to which they belong.

This study, therefore, will focus on the ways in which the mentally frail gain access to protective services. Specifically, this report will show that the mentally infirm run the risk of either finding access to needed protective services blocked (see Nader's 1980

discussion on no access to law), or of being involuntarily subjected to unwarranted protective services because they fail to conform to the behavioral norms of the community in which they live (see Spradley's 1970 study on public drunkenness; and Chambliss's 1973 work on vagrancy laws).

Statement of the Problem

When friends or family are unavailable, unwilling, or unable to give the required protective supervision to the mentally frail, our society relies on the doctrine of parens patriae, which gives the State sovereign power over disabled persons. Such power is euphemistically called "protective service." This study examines the fate of those debilitated individuals who, for one reason or another, become enmeshed in such social control proceedings. More specifically, the study is a comparative ethnography of two California Superior Courts, both of which have the power to withdraw basic civil liberties from citizens judged incapable of self-determination. These two courts are the Probate Court (also called the Surrogate Court), which can force citizens to relinquish control over their persons and property, and the Commitment Court (also called the Mental Health Court), which has even greater powers than the Probate Court because it

can order involuntary confinement and treatment in a mental institution.

First, this study will proceed by investigating not only the two Courts themselves, with their at times complementary and at times conflicting jurisdiction over the mentally infirm, but also the ways in which these interactions effect those persons who come within the Court's jurisdictions. Second, since the legal criteria used in both courts are primarily medical, the study will examine the relation of law to medicine, the two major social institutions charged with providing protective services. Third, this study will give special consideration to the elderly who become enmeshed in protective proceedings and will analyze the choices and options available to them, as these choices are influenced by institutions (courts, hospitals), by professionals (judges, doctors, social workers), by community norms and public attitudes towards the mentally and physically frail, and most importantly, by family and social networks. Finally, the study will focus attention on the obstacles which can prevent persons in need from receiving services, as well as on the system's built-in tendency to compell unwarranted protection. Thus, the purpose of this research is to provide an ethnographic description of the culture of protective services, and to broaden our

understanding of possible ways to protect and serve the vulnerable aged.

Protective Services and the Elderly

The aged are particularly susceptible to the various control methods employed in our culture, for at least two reasons. First, we believe that to grow old is to show a diminished capacity to care for oneself. Second, physical impairment can actually become so severe that self-determination becomes difficult regardless of one's mental capacities. Moreover, effective determination of proper intervention by professionals into the lives of the elderly is impeded by legal and social obstacles built into the present protective service system, obstacles which may actually prevent professionals from helping the vulnerable elderly.

The type and quality of protective services administered to the elderly of California involve minor infringement of personal freedom as well as the complete curtailment of civil liberties. These services can lead to the elderly person's loss of control over his finances and to his incarceration and treatment in a mental institution. The nature of protective services provided for a given elderly individual is currently determined more by the expertise of the particular regulatory agency with

which he initially comes into contact--whether hospital or police--than by medical evaluation of his symptoms or needs. Furthermore, whether the individual enters the judicial system through the Probate or Commitment Court depends primarily upon socio-cultural factors such as income, family involvement, and age. Yet despite these obstacles to appropriate care, if initial contact and subsequent treatment include specialized knowledge required to deal with the diversity of mental and physical problems common to the elderly, and if debilitated elderly individuals are given access to the court appropriate to their problems, the outcome of court ordered services can be most beneficial (Ruffin and Urquhart 1980).

When the initial contact, subsequent treatment and judicial processes are inadequate to deal with the complex problems characteristic of the frail elderly, then the protective service system forces these people to fit the law, and, as presently constituted, these laws lack the flexibility to fit the elderly. Consequently, although it is a system replete with able doctors, honest lawyers, learned judges, and conscientious social workers, the elderly--as I will show in this report--often find themselves enmeshed in a disruptive and even potentially dangerous system which gives little or no attention to their

pressing and specific needs. So, despite progressive legislation, it is increasingly apparent that the critical problems faced by the vulnerable elderly are not being alleviated by the current protective service system. Although most professionals will agree that a substantial number of the aged require some form of assistance, the present statutes and mechanisms are not only inadequate to protect these people but are also, in fact, exacerbating their suffering.

Given the limitations and failures of protective service systems across the country, the concept of parens patriae is eroding as the result of the efforts, of civil libertarians, medical critics and geriatric advocates. Despotic controls have drawn fire from a wide range of legal and medical professionals opposed both to the involuntary therapeutic model of mental health and to the involuntary application of fiscal restraints and protections. (See, for example, Goffman 1961; Ennis 1972, 1978; Laing 1967; Scheff 1966; Szasz 1961, 1963; Dershowitz 1968; Alexander and Lewis 1972.) Thus, protective services as we have known them may not for long be a viable option for meeting the needs of the frail elderly. Yet, without alternative means of addressing the underlying social problems which necessitate such protection, we are compelled both to rely upon and to

administer a faltering legal process which attempts to perform familial and social support functions.

Provisions for Protective Services

Formal social controls, that is, protective service mechanisms, sanctified by law are not new. In fact, the use of legal statutes to protect and control individual behavior has been a common phenomenon throughout history. Roman law, for example, made provisions for the appointment of a curatelle, that is, an individual designated by the State to manage the property of lunatics (Singer and Krohn 1924; Gunn 1977). In the seventeenth century, the introduction of custodial institutions into Europe and America helped society to manage the behavior of the mentally disordered. By the late nineteenth century custodial asylums were familiar sights throughout the United States (Fox 1978). Ostensibly, these early laws and institutions sought to conserve property and estates, and to control deviance through incarceration.

Today we still appoint surrogate managers to assist the mentally frail in managing their property, and we still build institutions for the purpose of incarcerating those deemed unable to live in society. Theoretically, however, our reasons for continuing these legal and medical traditions have changed. For example, we now

appoint guardians and conservators to protect those individuals who might be harmed or exploited by "artful and designing persons", to use the phrase of the legislators, and we involuntarily detain people in mental facilities for only "therapeutic" reasons.

Protective services are sanctified by the mistaken belief that such laws are benign, and are therefore implemented only when they benefit the mentally disordered. Moreover, involuntary detention and surrogate management statutes are often cloaked in deceptive language which, while obscuring the true aims of these laws, claims for them the socially responsible purpose of conserving estates for the conservatee, or protecting deviants from the larger society. For example, protective service statues have historically been used to incarcerate those "unsightly" individuals whose unpleasant or obnoxious behavior is a nuisance to the community, but who, in fact present no real threat to themselves or to the larger society.

In the past, we have relied on the expertise of the medical profession to help us to identify those individuals who must, for their own good or for that of society, involuntarily relinquish their civil liberties. But today, in determining who can and cannot be treated involuntarily, and under what conditions civil liberties

will be revoked, we rely more heavily on civil liberty lawyers and federal judges whose judgment is supported by numerous test cases. (See, for example, O'Connor v. Donaldson, 422 U.S. 563 [1975].) In other words, the legal system through due process of law has sharply curtailed reliance on medical diagnosis and treatment. Controversial treatment modalities such as ECT (electric convulsion therapy), psychopharmacology, psychosurgery, and involuntary mental health care are now issues of law, debated freely in the ritual of courtroom proceedings. Consequently, laws which impinge upon personal liberties now contain unprecedented protections, and the repressive legal codes of the past are slowly being replaced by statutes which are better policed, and more protective in nature than has previously been the case.

Recent legislation has begun to slice away at the rhetorical justifications for protective services. These new laws acknowledge that many of the legal and medical interventions imposed by our society on the mentally frail are not in the best interests of these people. The California legislature, in particular, has pioneered reform efforts in this area by enacting new legislation which takes into account that our protective statutes were not always used properly on behalf of the mentally frail.

This study is concerned with two California protective service statutes, the Probate Code which grants both "guardianships" and "conservatorships," and the Welfare and Institutions Code which grants "conservatorships" only.[1] The law defines both guardians and conservators as persons "lawfully" invested with the power to manage the property and rights of another, that is, to serve as protectors, preservers, or both. Although in practice there is little actual difference between a guardian and a conservator, the regulative codes under which these protectors are appointed and the powers granted by them differ significantly. Therefore, in order fully to understand the role and process of protective services in California, it is necessary to examine each code independently of the other.

Probate Code

In 1957, the State enacted an innovative conservatorship statute whose purpose was to replace the older statute which required that adults needing protective services had to be declared legally incompetent. Those sponsoring the new legislation had found the incompentency label to be unnecessary and stigmatizing.[2] Probate conservatorships can be established over the person, the property, or person and property of any adult "who is

unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter" (Probate Code Section 1801). Conservatorship of the estate may likewise be granted for a person "who is substantially unable to manage his or her own financial resources or resist fraud or undue influence" (Probate Code Sections 1801). (Probate Code has the jurisdiction to appoint both guardians and conservators, however, for convience I will use the term conservator in reference to both unless a distinction is required.) Establishment of such conservatorships may be either voluntary or involuntary; if a person requests a conservatorship, he must, to the satisfaction of the court, establish good cause for the appointment (Probate Code Section 1802).[3]

This legislative reform movement continued to gather momentum in the 1970s. By 1976 the legislature had made additional changes in the Probate Code, which further strengthened the judicial protections afforded to the proposed conservatee. (See 1976 Cal. Stats. Ch. 1357.) The 1976 statutory procedures now assured that legal counsel would be available to anyone who requested representation. New statutory provisions also gave proposed conservatees the undeniable right to a trial by jury, and prohibited involuntary incarceration and mental health treatment under the Probate Code. Statutory revisions

created an investigative unit to evaluate all existing and proposed conservatorships. In 1977 and again in 1978 additional changes were made to the existing Probate Code to strengthen even further the rights of the individuals involved in this legal process. (See 1977 Cal. Stats. Chs. 273, 453, 1237; 1978 Cal. Stats. Chs. 1268, 1315, 1363, 1369.)

The Probate Code has historically been used as a system by means of which to secure management of and control over individuals. Ideally, it should both protect the individual and conserve his estate. In practice, however, the system is used to limit the legal capacity of conservatees in financial matters. Families, for example, often use the probate laws to prevent elderly relatives who appear to be mentally or physically unstable from harming themselves through poor fiscal management. Moreover, although the legal codes are replete with provisions enabling the conservator to care for the frail person--such a provision is, for example, the authorization of emergency medical care or residential placement--the traditional function of the court has been more concerned with the expropriation of possessions than with the daily care and well-being of the elderly person.

Welfare and Institutions Code

The Lanterman-Petris-Short (LPS) Act became effective in California on July 1, 1969. This act made it possible to establish a conservatorship of the person, of the estate, or of the person and estate, in the case of any person gravely disabled as a result of a mental disorder or made infirm by chronic alcoholism (Cal. W & I Code Section 5350). One of the stated purposes of this innovative mental health legislation was "to end the inappropriate, indefinite, and involuntary commitment of mentally disordered person and persons impaired by chronic alcoholism..." (Cal. W & I Code Section 5150). The term "gravely disabled" is defined in the statute as "a condition in which a person, as a result of a mental disorder, is unable to provide for his basic personal needs for food, clothing, or shelter" (Cal. W & I Code Section 5008).

The LPS Act revolutionized the mental health system by transferring the responsibility for mental health care from state hospitals to local communities. It further revised the judicial review process for involuntary hospitalization, providing safeguards to all patients who are involuntarily detained. Because of the potential for infringement upon patient's personal liberties, the LPS Act guarantees him certain rights. Specifically, a patient is entitled to legal representation and, depending on the

phase of the psychiatric treatment, can demand either a court hearing on a writ of habeas corpus, or a court or jury trial.

Prior to the enactment of the LPS Act, the judicial procedures associated with involuntary hospitalization were non-adversarial. Simply put, the State was acting as a parental surrogate with authority over those deemed unsound of mind and for whom the existing laws provided almost no legal protections. With the passage of the LPS Act, however, massive protective provisions were established to guarantee the rights both of proposed conservatees and of those individuals for whom a conservatorship was already in existence.

The enactment of the LPS statutes stands as a milestone in the transition from prolonged incarceration without due process of law, to regulated medical intervention with substantial judicial involvement. More important, however, people who were once routinely incarcerated--mentally disordered persons, chronic alcoholics, and epileptics--could no longer be hospitalized involuntarily, that is, at least not unless and until the court ruled that they were unable to provide for their basic personal needs of food, clothing, or shelter. Ideally then, the LPS Act should have eliminated the involuntary

detention of individuals merely on the grounds of non-conformity to social norms of behavior.

Although some progress has been made towards this goal, the LPS Act has not, in fact, prevented many of the abuses it was designed to combat. Unfortunately, cultural values and social constraints frequently set the criteria on the basis of which individuals fall within the purview of the court and "the concept of grave disablement has been distorted in practice to permit treatment to be provided to those who are chronically mentally ill and who constitute public nuisances or embarrassments, but who could survive on their own if left in society" (Commission on Law and Mental Health Problems 1979:3).

SETTING

San Francisco, a modern metropolis, is built on a small peninsula in Northern California. This urban environment is well known for its moderate climate, steep hills, and panoramic views of the harbor and Pacific Ocean. The entire land mass of the city is only 45 square miles within which 678,974 people reside (United States Bureau of the Census 1980). The demographic characteristics of the city are, in most instances, like those of any other urban environment. There are, however, two areas in which San Francisco's inhabitants display some rather special characteristics which are pertinent to this study. These unique demographic factors are age and ethnicity.

The United States has over twenty-five million people who are 60 years of age or older, and thus represent approximately 11% of the entire population (United States Bureau of the Census 1980). In San Francisco, however, persons 65 years of age and over comprise 15% of the total population (United States Bureau of the Census 1980). Further, if we lower the age range to include those persons who are 60 years of age and above, the percentage rises to 21% giving the City-county the highest concentration of elderly persons in the State of

California. Moreover, of those aged 60 and over, 16% belong to economic strata below the established poverty level, and 37% belong to minority groups (Social and Economic Data, San Francisco City and County 1980-1981).[4]

Population figures for San Francisco help to illustrate one other intriguing characteristic of the city which has relevance to this study, that is, the rich ethnic representation and cultural diversity found in the neighborhoods. Census data show, for example, that 42% of the city's population is non-white. Specifically, the population is divided in this way: Black 86,414 (13%); American Indian, Eskimo, and Aleut 3,548 (0.5%); Asian and Pacific Islander 147,426 (22%); and Other [non-white] 46,504 (7%). By contrast, the total number of Whites in the community is presently 58% or 395,082. Furthermore, 83,373 people, or approximately 12% of the total population is reported to be Hispanic in origin (United States Bureau of the Census 1980). The interactions and merging of these culturally diverse inhabitants has given the city unique characteristics not found in most urban environments. In particular, San Francisco has gained a reputation for being extremely tolerant of a wide range of conduct, values, and beliefs.

Moreover, San Francisco has harbored a broad range of foreign refugees, as well as a great many counter-culture movements. For example, in addition to the ethnic migrations which have occurred in the city to date, San Francisco has also tolerated the evolution and existence of such groups as the beatniks, who settled in the North Beach area following the Second World War, the hippies who occupied the Haight-Ashbury district in the sixties; and the gay population which made a massive migration into the Castro area in the early seventies. Historically, San Francisco has been a haven for foreign people, and those individuals and movements which are not readily accepted in other parts of the country. The entire city is characterized by a liberal, easy going tolerance which is not found in many metropolitan areas.

Of special significance to the anthropologist are the ways in which these doctrines of tolerance and acceptance are manifested in individual neighborhoods. San Francisco is a complex city, literally a group of mini-cities which comprise the larger settlement. There are, for example, a financial district, an Italian neighborhood, an old Russian community, a bohemian quarter, a large Chinese community, Japantown, gay sections, numerous Jewish centers, black ghettoes, a skid row, a military post, both lower and middle class residential areas for

blacks and whites, a Hispanic barrio, and several neighborhoods reserved for the wealthiest magnates of Northern California. In addition to this racial and cultural diversity throughout the city, economic disparity exists between the various neighborhoods.

Consequently, community response to those who display deviant behavior or mental disorders is often determined more by the cultural values or economic conditions within that particular neighborhood, than by the presence or absence of a "diagnosable" mental illness, so that odd behavior or management problems which would automatically initiate community intervention in one section of the city will be discretely handled by the family in a second, and in a third, might be totally ignored.

Further, the nature of the intervention which does occur is more often related to the locale in which the action takes place than it does to the specific behavior. As one of the study's informants said, "The way you behave will result in your getting into a mental hospital or jail, depending on where you're misbehaving."[5] Moreover, age, economic status, and ethnicity are crucial factors used by the community in determining the preferred method of intervention.

Therefore, to understand protective services we must look beyond the boundaries of the courts which are, by design, limited in their capacity to intervene. As one informant phrased it, "The court becomes involved because people come to us. We don't run out into the street and drag them in." Thus, the study of protective services as culture must be approached by examining the norms of the particular community from which debilitated individuals enter the system. The setting in which protective services exist is not so much a courtroom, or even a city by the Bay, but rather, the values, beliefs, and attitudes of those by whom such services have been established. Thus, those who do not find themselves enmeshed in protective services, but who meet the established legal and medical criteria for social intervention and protection, are just as important to this study as those who do.

RESEARCH PROCEDURES[6]

Bronislaw Malinowski, one of the greatest field workers in anthropology, said that the task of ethnography required the ability "to grasp the native's point of view, his relation to life, to realize his vision of his world" (1922:25). Accordingly, the goal of ethnographic field work is to learn from people, and in this way to gain the insight necessary to describe their culture. Professor Malinowski further suggested that culture could best be understood through the study of its institutions, that is, organized systems of human activity, or as he defined them, groups of "people united for the pursuit of a simple or complex activity" (1945:50). The people who comprise these institutions have the charter, the training, and the technology to achieve their task; the institution viewed in this way is the premise upon which Malinowski's functionalist theory is built.

This research, building on the intellectual traditions of the past, is an ethnographic study of protective services in contemporary American society. More importantly, however, it is a description of two upper echelon institutions--legal and medical--as these are perceived by those individuals who work in them. This study applies traditional anthropological field work methods where

appropriate, and adopts, where necessary, other techniques to fit the urban environment or the research project itself. From a methodological viewpoint, the goal of my study is to provide a systematic comparison of two courts by means of three data gathering techniques: observation, ethnographic interviews, and statistical packaging of archival materials.

Observation

Observation, at least in theory, is a method by which a researcher observes and records the daily activities of his or her informants, by this means sheds ethnocentric bias, and thus is better able to understand the cultural setting under study. Thus, the logic and success of this procedure is dependent on a combination of time, copious note taking, and observation.

Although I spent sixteen consecutive months in San Francisco Courts--eight months in Probate Court and eight months in the Commitment Court--the field work for the entire study spans a twenty-two month period which began in 1979 and ended in 1980. This period includes all aspects of my research, from the initial contacts to the completion of the archival investigation. Moreover, much of the time was spent touring mental health facilities, state hospitals, and city programs designed to serve the

mentally frail. Furthermore, to understand and appreciate the judicial procedures and events of San Francisco, I expanded my field locale and time frame to allow observations of courts outside the city.

By observing other courts in the Bay Area I accomplished two aims. First, I added to the study a comparative dimension which broadened and improved my understanding of the San Francisco courts. Second, I was able to protect the identity of individual cases and proceedings as reported in this study. That is, since much of the demographic material reported here is specific to the city of San Francisco, it is impossible to hide the identity of the city without distorting the research findings. However, by observing other courts I was able to compare and contrast the different proceedings, and where needed, to create composites of individual cases which are representative of those hearings observed in San Francisco and thus to insure confidentiality of sources.

While I acted as observer, the people of the court became my mentors, and I learned about their world from their point of view. My notations included as much dialogue as possible, enumeration of persons present and description of the ways in which they approached their various roles, demographic data (age, ethnicity, sex), fiscal factors, courtroom findings, procedural arguments

and objections, legal representation, placement recommendations, types of petitions, formal and informal conflicts, length of hearings, medical involvement and diagnoses, and information about the proposed conservatee's support system. The speed at which the judicial system proceeds, however, makes a systematic examination of all these factors extremely difficult. For this reason I developed a series of forms which were used to increase the speed at which data could be recorded, and further, to help insure uniformity of information being collected in all cases (Appendices 1 and 2). These forms, together with the more traditional anthropological notebook, became the primary tools used in recording personal thoughts and courtroom observations.

Ethnographic Interview

Sitting in court week after week, I slowly gained a rapport with many of the professionals who work in or with the legal system. Naturally, informal conversations occurred, and in some respects these ongoing interactions yielded some of the most interesting information obtained in the course of the research. Further, these informal learning sessions served the additional function of directing me to those individuals who provided the greatest insights concerning protective services. Once I

identified these persons, I then scheduled interviews with them. These interviews, whenever possible or appropriate recorded on tape, were of an unstructured type in the sense that in them I asked only broad, open-ended questions. Moreover, although I made sure that discussions included certain subject areas, I allowed the informants to go off into areas which they felt were important. Thus, I was able to elicit data on issues which I, as a researcher, felt worthy of investigation, but more importantly, I allowed my informants to expand on what they believed to be significant.

This sytem of selecting and interviewing people is most satisfactory, but unfortunately, it is also totally dependent upon good informants having access to the court, which was not always the case. Since many knowledgeable people in the community had little or no direct contact with the courts, my field sites, I was forced to expand my study to seek out various professionals in their own environments. In most instances I relied on key informants within the judicial and medical systems both to point out these informed individuals, and to assist me in gaining access to them. In essence, I was passed along a professional network and was directed to key individuals who had no direct involvement in the courtroom setting but

who, nevertheless were important actors in the wider system of protective services.

Consequently, while recruiting informants I employed several techniques which helped me to understand the culture of protective services. Whenever possible, before scheduling a formal interview, I would engage the informant in conversation that was informal, yet calculated to elicit information about the courts understudy. On occassion, I relied solely on a trusted source to schedule a single-encounter interview, and once or twice I struck out blindly on my own in search of a informant who could help to fill in gaps in my data. My search for good informants took me well beyond the scope of the courts, and also well past the city limits. Therefore, the people interviewed in this study include a diverse collection of local protective service workers, as well as a select group of professionals working outside the city, and, in a few instances, outside the Bay Area.

In all, I interviewed 44 professionals, and a few, because of their expertise and keen insights, I interviewed more than once, some as many as three times. The duration of the interviews varied from about one hour to six hours, with the average interview lasting approximately three hours. Of those professionals formally interviewed, fifteen were women and twenty-nine were men.

The predominant number of men indicates not the interview's selective bias, but rather, that the institutions reviewed are dominated by men.

Protective services may be formally established by law, but it would be a grievous error to assume that the legal community is solely responsible for their administration and application. It would also be misleading to assume that all professionals share a common perspective concerning the applicability of protective services for the aged. To capture this diversity of perspectives, I chose informants from four professions representing complementary but distinct functions in the implementation of protective services. Because the two primary professions having impact on the protective service system are law and medicine, nineteen of the interviews were conducted with judges, lawyers, and other court specialist, and eighteen with medical professionals, including psychiatrists, psychiatric nurses, and community mental health workers. The subjects of the other seven interviews were those professionals who frequently have contact with protective service programs, though they do not necessarily have direct contact with the judicial proceedings. Specifically, four of these interviews were with geriatric specialists in the community, while three

were with law enforcement officials who routinely deal with the mentally and physically impaired.

As an ethnographer, I am curious not only about the individual's point of view, but also about that of the group to which the individual belongs. Therefore, I have examined and recorded similarities of opinion which were obviously group specific to a particular profession. Thus, each informant provided two distinct types of information about protective services as administered to the elderly: first, an introspective account of his personal feelings and beliefs about the elderly who become enmeshed in protective proceedings, and second, a professional discussion about the rewards and frustrations of his job as viewed from within the profession.

Archival Materials

Our culture has an obsession with keeping records and with documenting almost everything. Nowhere, however, is this compulsive behavior more evident than in law. Legal documentation, by nature, is one endless series of dates, such as filing dates, petition dates, objection dates, ruling dates, hearing dates, and so on and so forth. Each date corresponds with a procedure of law, and sometimes these dates are accompanied by legal briefs which expound on the reasons for which a particular date

is important. These records, which by the way are generally filed in triplicate, eventually come to rest in a file inside an official vault.

For the purpose of this study, there was more than ample legal documentation about the procedures and operation of the Probate and Commitment Courts in San Francisco. However, despite the massive documentation regarding legal management and procedures, only a small portion of the information contained in the files is applicable to this study. Further, the types of information available about the two courts studied here varies considerably. For these reasons, I developed a number of pre-coded computer forms to ensure that comparable data were recorded for each case and to reduce the time required to locate and to record the information as found in the files (Appendix 2).

Biennial Review

Since no statistical compilation had previously been performed on either court's records, the archival investigation required a multi-stage approach. First, because I was interested both in the courts' interaction with one another, and in the ways in which they have changed over time, I iniated a ten-year biennial review of both courts; thus this study examines the years 1969,

1971, 1973, 1975, 1977, and 1979. I chose 1969 as point of departure because it is the year in which the LPS Act became law.

This biennial review, by providing preliminary data on all cases filed, creates a statistical package of baseline demographics for both courts. While the kinds of statistics available varied slightly from court to court, these reviews, in general, provided data on the total number of petitions filed, types of petitions, judicial actions, dates on which petitions were filed and ruled on, and the age and sex of the proposed conservatees (Appendix 1 and 2).

Subsample Review

The second, and final stage of the archival study involved drawing a 13% subsample from the total number of petitions filed in the biennial years beginning with 1969 and ending ten years later in 1979. Specifically, the sample consists of 600 individual adult cases randomly selected, with 300 files from Probate Court and 300 dockets from the Commitment. It provides 50 cases from each year for each court. The information collected in the subsample is a detailed examination of the legal, social, fiscal, and medical issues present in conservatorship proceedings.

The strength of this study's approach is found less in the individual methodologies--observation, ethnographic interviews, statistical compilation of archival data--or in the data obtained in them than in the combination of the three, which yielded information sufficient both to delineate the multiple aspects of protective services as an institution and to provide an understanding of protective services from the perspective of community members. Table I summarizes the research procedures used in this study.

TABLE I

Research Procedures

Techniques	Sources of Information	Numbers
Observations	8 months Probate Court	457 Cases
	8 months Commitment Court	1,202 Cases
Ethnographic Interviews	Legal Personnel	19 Informants
	Medical Personnel	18 Informants
	Gerontologists	4 Informants
	Law Enforcement Personnel	3 Informants
Archival Records	Biennial Review 1969-1979	
	Probate Court	3,609 files
	Commitment Court	2,356 files
	Subsample Review (13%)	
	Probate Court	300 files
	Commitment Court	300 files

ETHNOGRAPHY: PROBATE COURT

Historical Perspectives: Biennial Review

The number of legal petitions filed over a ten year period, 1969 to 1979, seeking the establishment of Probate conservatorships and guardianships over adults and minors decreased. In 1969, for example, there were 757 petitions filed in the City and County of San Francisco, but by 1979 the number of Probate filings had been reduced to 441. This 42% decline in the number of Probate petitions filed over a ten year span demonstrates a drastic reduction in the community's reliance on the Probate Court as a means

TABLE II

Biennial Review 1969 to 1979: Number of Adult and Minor Probate Petitions Filed in San Francisco*

Year	Minors	Adults				Total
		Males		Females		
	Number	Number	Percentage	Number	Percentage	Number
1969	201	227	40.8	329	59.1	757
1971	194	175	38.8	276	61.1	645
1973	124	172	36.2	302	63.7	598
1975	111	177	38.9	277	61.0	565
1977	195	152	37.2	256	62.7	603
1979	133	113	36.6	195	63.3	441

*Note: Rounding Error

of establishing protective holds over individuals. Further, as Table II demonstrates, there was a reduction in Probate filings for both minors and adults; however, the decline in court use was much greater among the adults for whom the number of petitions filed with the court from 1969 to 1979 decreased 45%.

To explain the reduction in the number of petitions filed with the Probate Court we must examine several factors, both legal and non-legal, which have had a profound effect on court use. First, there have been several significant changes in the law which have undoubtedly had an impact. For example, in 1969 the State of California implemented the LPS Act, which was designed to protect and treat the mentally infirm. Prior to this time, the community had relied on the Probate system to protect these people. With the enactment of the LPS Act, many of those who would previously have found themselves enmeshed in Probate proceedings were transferred into the Commitment system. Moreover, that in 1976 the legislation specifically prohibited involuntary incarceration and mental health treatment under the Probate Code further limited the number and more strictly defined the category of people eligible for protective services as administered under Probate Law. Other technical changes in the law which further reduced the number of cases before the

Probate Court can be found in the statutory revisions of 1976, 1977 and 1978.

The introduction of massive legal safeguards and an investigative unit into a system which had always operated on a non-adversarial legal model aroused vehement protests on the part of the legal community. Critics of the new laws argued that the old statutes were sufficient to protect the civil rights of those deemed incapable of self-determination and that the new safeguards were both unnecessary and cumbersome. However, the new laws have led to a decline in the number of adult Probate petitons filed.

The second set of factors responsible for the decline in Probate filings is essentially non-legal. The office of the Public Guardian was created by the San Francisco Board of Supervisors to serve as the legal guardian or conservator for anyone for whom there is no person or corporation qualified or willing to act. During this study the Public Guardian's Office enforced a policy which prohibited its officials from assisting anyone whose assets were valued at less than $6,000. By establishing and enforcing an arbitrary and exclusionary economic policy, the Public Guardian's Office, in effect, prevented many of San Francisco's poor and isolated from receiving protective services through the Probate Court. Moreover,

this policy not only reduced the overall number of petitions which came before the court in 1979, but also systematically excluded indigent people from gaining access to the judical system.

Although there has been a substantial decline in the number of conservatorship petitions filed during the past decade, other statistics compiled from the biennial review show that court use and application have remained surprisingly constant. Referring back to Table II, we see that regardless of the yearly reductions in adult petitions, the ratio of male to female proposed as conservatees in the Probate Court varied little: on the average 62% of all adult petitions filed in Probate Court sought conservatorships over adult females, while only 38% sought such protective supervision over adult males. Moreover, of special significance is that the ratio of females to males represented in protective service petitions has remained relatively constant during the past decade. (This overrepresentation of women in Probate judicial proceedings is age specific. That is, as we will see in the next section, the Probate Court is inundated with petitions concerning the elderly, a segment of the American population which is predominately female.)

Another area in which the biennial review clearly shows that Probate proceedings have not changed over the

past ten years is that of judicial actions in conservatorship proceedings. In Probate Court it is possible to seek a temporary conservatorship over those frail and debilitated individuals who require short-term assistance in dealing with problems which frequently arise while they await the appointment of a regular conservator. The mean time for establishing a permanent conservatorship over an adult in 1979 was 32 days. Temporary conservatorship proceedings are designed to hasten protective coverage, and the mean time from petition filing to judicial ruling in 1979 was two days, with 71% of all adult temporary petitions being ruled on the same day in which they were

TABLE III

Biennial Review 1969 to 1979: Number of Probate Petitions for Temporary Conservatorships on Adults and Summary of Judicial Actions*

Year	Approved		Denied		Unadjudicated		Total
	Number	Percent	Number	Percent	Number	Percent	
1969	65	59	0	00	45	41	110
1971	74	100	0	00	0	00	74
1973	53	100	0	00	0	00	53
1975	60	98	0	00	1	2	61
1977	59	92	0	00	5	8	64
1979	39	98	0	00	1	2	40
Total	350	87	0	00	52	13	402

*Note: Rounding Error

filed. Table III contains information about the total number of temporary adult conservatorship petitions filed, along with a tally of judicial actions over a ten year period.

Petitions for temporary conservatorships precede or are filed in conjunction with regular conservatorship petitions only 15% of the time. This percentage is low because temporary conservatorships, by design, are applicable only in those cases in which an emergency or immediate crisis exists. Like the number of petitions for regular conservatorships, the total number of petitions seeking temporary protective services has also decreased. In fact, the decline in temporary petitions between 1969 and 1979 was 64%.

Further, since temporary conservatorships are to be initiated only in the most severe cases, it is not surprising to discover that, as the statistics contained in the biennial review show, not a single temporary conservatorship petition has ever been denied. Table III illustrates that, on the average, 87% of all temporary petitions were approved, no petitions were denied, and 13% were never ruled on due to a variety of factors, including death of the proposed conservatee, withdrawal of the petition due to objections, or recovery of the proposed

conservatee from the condition which originally had necessitated protective services.

In 1969, however, 41% of the temporary petitons were never ruled on. This figure is considerably higher than those reported for the other years. The reason for this large number of unadjudicated cases is that in 1969 the LPS Mental Health Act had just been introduced, and forty-four cases out of the forty-five pending cases were transferred into the Commitment system prior to a Probate ruling.

Indeed, the impact and influence of the LPS Act on the Probate Court can not be denied or minimized. Still, if we view the historical trend beginning in 1971 and ignore the initial impact of the LPS Act, we see that the pattern of judicial actions on temporary petitions remains constant. Most importantly, as the biennial review of data between 1971 and 1979 demonstrates, 98% of all temporary conservatorship petitions are approved, only 2% of the petitions are never ruled on, and no petitions are denied.

Similarly, judicial actions on regular adult conservatorship petitions are basically the same as found in the judicial actions on temporary conservatorships. For example, on the average 85% of the petitions were approved, 15% were never ruled on, and less than 1% of all

petitions filed are denied. Even though the Probate system is set up on a non-adversarial legal model in which there is seldom an opposing counsel present, it is still astounding that so few petitions are denied by the court. Table IV clearly shows that these composite percentages remained virtually unchanged over the span of a decade, although the total number of conservatoship petitions decreased by 45%.

TABLE IV

Review 1969 to 1979: Number of Probate Petitions for Conservatorships on Adults and Summary of Judicial Actions*

Year	Approved		Denied		Unadjudicated		Total
	Number	Percent	Number	Percent	Number	Percent	
1969	441	79.5	3	0.5	111	20.0	555
1971	390	86.7	0	00	60	13.3	450
1973	417	88.0	0	00	57	12.0	474
1975	390	85.9	0	00	64	14.1	454
1977	344	85.4	0	00	59	14.6	403
1979	256	83.1	2	0.6	50	16.2	308
Total	2238	84.6	5	0.2	401	15.2	2644

*Note: Rounding Error

While over the last decade the Probate Court has approved the vast majority of temporary and regular conservatorships, it has also tended to be a court lacking in

formal conflict. (Formal conflict refers to those legal disputes in which a legal motion or petition was presented to the Court.) In Table V we see that there were virtually no formal objections filed in cases involving petitions for temporary conservatorships, and in regular conservatorship petitions for formal objections were raised in only 3% of the cases. Moreover, of the

TABLE V

Biennial Review 1969 to 1979: Number of Formal Objections Filed in Conjunction with Temporary and Regular Probate Conservatorship Petitions*

Year	Temporary Conservatorships			Regular Conservatorships		
	Total	Objections	Percent	Total	Objections	Percent
1969	110	0	00	555	16	2.9
1971	74	0	00	450	6	1.3
1973	53	0	00	474	16	3.4
1975	61	0	00	454	15	3.3
1977	64	9	14.1	403	13	3.2
1979	40	0	00	308	9	2.9
Total	402	9	2.2	2644	75	2.8

*Note: Rounding Error

75 formal objections filed in conservatorship cases between 1969 and 1979, only thirteen of these, or 17% of all objections were filed by the proposed conservatees to oppose the establishment over them of protective

supervision as implemented by the Probate Court. Thus, generally, formal objections did not oppose the establishment of the Probate conservatorship and, in most instances, were not filed by the proposed conservatee. Rather, they were filed by concerned relatives and were directed towards the peripheral issue of who should be appointed to serve as the conservator. Since one of the main functions of the Probate system is to conserve the estate of the mentally impaired, it is not uncommon to have the court filled with relatives who are fighting over the issue of who should be appointed to serve in the responsible position of money manager.

In 1977, however, a unique situation arose in which almost half of all the objections filed with the court embraced the theme of religious freedom. During this year seven of the objections filed in temporary conservatorship proceedings and three of those filed in regular conservatorship cases were initiated by the Unification Church. The church initiated formal objections on behalf of those of its members who were placed under temporary conservatorships for the purpose commonly known as "deprogramming." In the late 1970s the California Court of Appeal ruled that temporary conservators were enjoined from using the services of persons or organizations that

would attempt to alter the religious beliefs of conservatees.

The only feature of the Court which has shown an appreciable change over the past decade is the number of petitions filed in it. But this decline cannot be viewed solely in terms of the internal function of the Court. Rather, the decline is due to a number of interrelated factors including the implementation and application of community mental health laws, legislative changes in the Probate statutes, and finally, the community's ability to gain access to the court system because of the legal and social realities of protective services as administered under the auspices of the Probate Court.

The Daily Court: Probate in Context

The courtroom was built in another era. The walls are panelled in oak, and the room is filled with row after row of oak benches like pews, reminiscent of earlier building styles. The elevated judicial bench, the display of official flags, the enclosed jury box, and the wooden bar which separates the judge and his staff from the general public all serve to legitimize the power and dignity which is inherent in this court. The official proceedings are attended by an array of professionals,

family members, and partisan observers. The black-robed judge assisted by an entourage of professionals, the lawyers who attend attired in dark three-piece suits, and the proposed conservatees and conservators who attend dressed in formal attire all contribute to the ceremonious character of the Probate Court. Moreover, the repetitive nature of most protective service proceedings makes these solemn judicial hearings appear ritualistic. Indeed, strict adherence to judicial customs and protocols, together with the Court's obsession with saving time and expediting cases give the aura of stilted proficiency.

In this rather formal environment, decisions regarding the approval or denial of Probate petitions seeking to establish protective supervision are ultimately made. The culture of protective services, however, cannot be adequately understood simply by observing and recording the events which transpire in jural proceedings. As one informant bluntly phrased it, "The problem with you sitting in court is that you don't know what is going on. There many have been sixty hours involved in coming to a solution that takes two minutes to relate to the judge...but you don't know what happened."

Accordingly, the crucial dilemma surrounding the study of protective services is to become aware of other factors which may have a direct impact on judicial

decisions, but which may be far removed from the actual proceedings. This section not only reports on data gathered from spending eight months observing and recording Probate hearings, but further, includes data taken from the 44 ethnographic interviews conducted with professionls, information gathered while touring numerous community facilites and programs, and finally, an in-depth statistical compilation of 300 Probate Court cases randomly selected from the biennial review. In effect, the data presented in this section are a potpourri of observations, thoughts, and statistics which have been merged together to present a more holistic view of protective services as administered through the Probate system. Accordingly, the following sections will explore other factors which have been artifically removed from this legal section for purposes of analysis only. Remember, however, that these variables are not separate entities but rather are integral parts of the overall legal process which directly effect judicial outcomes. Each section, therefore, should be viewed as a single building block stacked on the legal foundation presented in this section.

Legal

During the eight month observation period 457 cases were placed on the Probate calendar. Because of the diversity of items placed on calendar the presiding judge is frequently faced with a hodgepodge of issues requiring legal intervention. For example, on any given day the matters before the court might include petitions seeking the appointment of a guardian or conservator, the final accounting of an existing conservatorship, the removal of the present conservator and the appointment of a successor, or perhaps the termination of a conservatorship and the restoration of legal capacity to someone who had previously been declared legally incompetent to manage his own affairs. By and large, however, the court in San Francisco has divided living Probate into two sections. The first deals primarily with financial matters such as the filing of fiscal reports and final accountings, while the second, that with which I was directly involved, focused more on the establishment of new conservatorships and the maintenance of existing protective holds.

As an observer I was interested in viewing the drama which took place in relation to the legal process of seeking protective supervision over those deemed mentally or physically incapable of self-determination. In fact, however, 42% of all matters placed on the judicial

calendar and brought before the court lacked any sort of observable drama, that is, no judicial action was visible. These "paper cases," as this study refers to them, include all Probate matters in which there was no interaction or participation by anyone present in the court. Under the category of paper cases I have included those matters in which the clerk called the case and no one came forth, as well as those cases in which a lawyer or other interested party simply requested that the hearing be postponed or dropped from the calendar. The other category of cases which lacked drama, but not necessarily substance, were those in which the judge made a ruling based on previous court appearance, court records, or both, even though no one was present when the ruling was made. These paper cases were fairly common, but since there was no observable drama or interaction to record the significance of the case cannot be assessed.

Generally, the court delayed action on paper cases until all drama cases before the court had been heard. In most instances the clerk would simply call the case number and when no one responded the judge would rule accordingly. Consequently, one of the limitations associated with observation in a court of law is that a significant number of cases in Probate were ruled on without the benefit of observable drama. In one case of this type a

petition for conservatorship was initiated for an elderly person who died prior to the scheduled hearing. The judge, having been informed of the death would have simply waited until the end of court, had the case number called, and dropped the matter from the calendar or denied the conservatorship without discussing the reasons for his actions in open court.

"Drama cases," in contrast to paper cases, are those in which some observable drama or action took place (see Turner 1957). During my eight months in Probate Court I observed and recorded information on 263 action oriented cases, or 58% of all cases scheduled on the judicial calendar. Of these, 218 cases were observed only once, while 45 of the cases were repeat cases. That is, the same case came before the court on more than one occasion, some as many as three times.

The observation of drama cases not only provides valuable insight into the legal processes associated with protective service laws, but also allows for the collection of important demographic variables which cannot be found by simply looking through court records. The following drama cases illustrate the function and diversity of the Court. Further, they demonstrate that drama cases are useful tools employed in the study of protective services.

Case No. 1--The clerk calls the case number and a white, middle-aged lawyer and his client, the proposed conservator, who is also white and middle aged step before the court. The proposed conservatee is not in court, and neither is anyone else who is concerned with this case. The judge is reading the file which contains a medical affidavit attesting to the proposed conservatees inability to attend court, along with a report by the court investigator confirming that the person is unable to attend court and that he does not wish to contest the proceedings. The judge looks up from the file and tells the clerk to swear the man in. The clerk performs the swearing in ceremony and the man takes the witness stand. The judge begins the questioning:

Judge:	How did you come to know him?
Proposed Conservator:	From the parish.
Judge:	Your're not related?
Proposed Conservator:	No.
Judge:	What is his condition, how would you describe his mental and physical condition?
Proposed Conservator:	Incompetent?
Judge:	What's that?
Proposed Conservator:	He is forgetful.
Judge:	I'm forgetful; hope you don't call me incompetent.
Proposed Conservator:	No.
Judge:	What is his likelihood of leaving the hospital?
Proposed Conservator:	He wants to leave.
Judge:	What is the outlook?
Proposed Conservator:	Chances are slim.
Judge:	He owns a home?
Proposed Conservator:	Yes.
Judge:	What are your plans for the home?
Proposed Conservator:	I have no plans.
Lawyer:	We're planning on renting or leasing.
Judge:	Personal assets, $10,000 00. What is that?
Proposed Conservator:	I guess a bank account.
Judge:	You're not sure?
Proposed Conservator:	No.
Judge:	Does he have social security or a pension?
Proposed Conservator:	Yes, social security and a pension.
Judge:	How much?

Proposed Conservator:	Unknown.
Judge:	What is this $10,000.00?
Proposed Conservator:	A guess.
Judge:	A bond of $20,000.00 is set, if you find it is more I want it increased, if less, I'll reduce it. An annual accounting and an inventory in ninety days [to the lawyer.] Do you have the form? [judge is handed form passed from clerk to judge.] Court finds the need for a conservator, however, Counsel, no fees until after the accounting. No finding of incompetency, 3a on the order form is a little confusing [meaning that a finding of incompentency is denied.]

The entire proceedings took eight minutes and ended with the judge signing the Order Appointing Conservator, which is the document that was handed to the judge at the end of the hearing. In addition to establishing a conservatorship of person and estate the judge also refused to grant the lawyer his fees until the first accounting had been filed and reviewed by the court. Moreover, he refused to grant a finding of incompetency.

Case No. 2--In this case a son was appointed as conservator of person and estate for his aging father. The son is white and middle-aged and is represented by a white female lawyer, also middle-aged. The father is the only other person in Court, he is frail looking, white and quite elderly. Although both the father and son are questioned by the Court, only the son is sworn in. The hearing lasted ten minutes and was uncontested. The court file contains a medical affidavit, but no investigative report is included because the proposed conservatee is present in court. The testimony began with the Judge asking the questions.

Judge:	The Court will find that Mr. Smith is in court. Can you hear me? [To the elderly man sitting at the table with the lawyer. There is no response, so the Judge says that he will step down later.]

Judge: You're the son?
Proposed Conservator: Yes.
Judge: Any other relatives?
Proposed Conservator: No, brother is dead.
Judge: He lives alone in a hotel?
Proposed Conservator: Yes, on Sutter Street.
Judge: He needs assistance, can you tell me the nature of his estate?
Proposed Conservator: Just the possessions in the hotel and a savings account.
Judge: Any social security?
Proposed Conservator: I don't know.
Judge: Pension?
Proposed Conservator: Yes, a longshoreman's pension.
Judge: All right, there has been no opposition?
Proposed Conservator: No.
Judge: [At this point the judge steps down from the bench and goes to the table where the elderly man is sitting.] I have a duty under the law to ask you some questions. Your're in a court now, do you know that?
Proposed Conservatee: Yes.
Judge: Your son has filed a petition. Let me tell you what a conservatorship is. [The judge then spends the next three minutes outlining the duties and functions of a conservator of person and estate.] Do you have any objections to your son serving in this capacity?
Proposed Conservatee: Absolutely none.
Judge: Do you get social security?
Proposed Conservatee: Yes.
Judge: What do you do with it?
Proposed Conservatee: Take it to the bank.
Judge: You also get a longshoreman's pension? How much?
Proposed Conservatee: [unintelligible]
Judge: Bond of $20,000.00, but if the assets exceed this we must increase this. Counsel will file petition to increase bond.
Lawyer: Yes sir.
Judge: Inventory and yearly accountings and funds can only

be used for his needs. Now counsel, 3a is not necessary so I'm not granting this. Petition granted. Thank you Mr. Smith.

Case No. 3--An interesting case in which three white elderly women came to court and petitioned for a guardianship to be established for one of their neighbors, an elderly white female. The proposed conservatee objected to the proceedings insisting that she could care for herself. The proposed conservator, an elderly white female was sworn in. The other two women, who are also elderly and white remained seated in the visitors' section and were not sworn in. The proposed conservatee and the white middle aged male lawyer who represented the proposed conservator remained seated at the table in front of the Judge.

Judge:	Court has read the report. Mrs. Smith can you hear me?
Proposed Conservatee:	[No response]
Judge:	I'll step down later. [Turning to proposed conservator seated in witness stand.] Your relationship?
Proposed Conservator:	Friend.
Judge:	She lives in her own home?
Proposed Conservator:	Yes.
Judge:	Can she take care of herself?
Proposed Conservator:	No.
Judge:	Assets?
Lawyer:	Personal income of $15,000.00, and $325.00 a month in Social Security, total of $20,000.00. [Judge steps down from bench and approaches the elderly woman seated at the table.] Can you see me?
Proposed Conservatee:	[Woman nods head yes.]
Judge:	We are in a court. You're in a court and I'm the judge. The petitioner, do you know her?
Proposed Conservatee:	Yes, she is a neighbor.
Judge:	Sometimes when we get older or sick, we need someone to take care of us.
Proposed Conservatee:	I want to stay home.

Judge:	No one is asking about your home. Do you need help to take care of yourself?
Proposed Conservatee:	I take care of myself.
Judge:	You have trouble walking? [Woman uses a cane, and when she came before the court her gait appeared slow and frail.]
Proposed Conservatee:	No.
Judge:	It appears that you need help?
Proposed Conservatee:	I'll take care of myself.
Judge:	How much money do you get every month?
Proposed Conservatee:	My check.
Judge:	In the mail? How do you cash it?
Proposed Conservatee:	I take it to the place I used to work to cash it.
Judge:	What do you do with the money?
Proposed Conservatee:	I use it for what I need.
Judge:	How do you cash it?
Proposed Conservatee:	Myself, at store or bank.
Judge:	How far is the bank from your home?
Proposed Conservatee:	[Unintelligible.]
Judge:	[He is now speaking to one of the neighbors, who is sitting in the visitors' section]. What is your name?
First Neighbor:	Mrs. Jones. We're both Russian.
Judge:	Do you know any reason Mrs. Doe [proposed conservator] should not be appointed conservator?
First Neighbor:	No.
Judge:	Does she [Mrs. Smith] need help? Can she go shopping by herself?
First Neighbor:	She can't any more, the neighbors must take her.
Judge:	[Now turning to the other neighbor in the visitors' section]. Do you find the need for a conservator?
Second Neighbor:	Yes, since 1951 I've known her.
Judge:	Mrs. Smith, the court finds the need for your own good to appoint a conservator.
Proposed Conservatee:	No, take things away.

Judge:	No one is taking anything away. Court finds need, physical infirmities that make it difficult if not impossible to get out of the house.
Proposed Conservator:	She can get up and down the stairs.
Judge:	OK, bond is $20,000.00. I'll not make a finding of 3a; it is being deleted.

Case No. 4--In this case the issue was that of restoring to capacity a white, middle-aged woman who has been under a guardianship for eight years. The woman is represented by counsel from the Department of Social Service, a white middle-aged woman. Other persons in court include the board and care operator of the home where the women presently lives. She is female, black, and middle-aged. The only other person present in court is a white, female, middle-aged social worker from the Department of Social Services. The conservatee and her lawyer are both involved in the proceedings; the social worker and board and care operator remain as silent observers. The judge grants the restoration and the hearing ends with the conservatee crying and hugging the people in the room. The judge comes down from the bench to shake the young woman's hand and wishes her well. The lawyer tries to explain that the past few months have been a very emotional time for her client.

Judge:	We have a petition for restoration to capacity. How long has this been going on?
Lawyer:	Since 1973.
Judge:	Where will she be staying?
Lawyer:	She can answer for herself.
Judge:	[Turning to developmentally disabled woman.] Maryann, where are you staying?
Conservatee:	In a house with six other people [She then goes on to name the six people.]
Judge:	Do you like this place?
Conservatee:	Ya.
Judge:	You're satisfied there? How long have you been there? Three months?
Conservatee:	Three years.
Judge:	Any assets?

Lawyer: No, she receives SSI.

Judge: SSI goes directly to the home?

Lawyer: Yes, and the board and care home gives her money. I have a social worker here if you would like to ask her any questions.

Judge: Are all the people in the home disabled?

Lawyer: Yes.

Judge: What is the trend in restoration of the disabled? Would you please explain.

Lawyer: Yes, judge, we feel that it is not necessary, and I have a social worker to testify.

Judge: Are they prepared to help or assist here if the necessity arises?

Lawyer: Yes, they can help them.

Judge: I'm still getting requests for these types of guardianships. Why?

Lawyer: In some cases we feel they are needed.

Judge: [The judge turned back to the conservatee and asked about the things she liked to do, and how she managed on public transportation.] Where do you go sometimes?

Conservatee: Just for a ride?

Judge: Where do you like to go?

Conservatee: I like to go to the park.

Judge: Based on the representation that there is backup...

Lawyer: Her speech is physical, not mental. [Reference to the fact that the conservatee's speech is slow and labored.]

Judge: I just want to be sure there is aid. We're going to let you vote Maryann, vote for the person of your choice, the best person. Very well Maryann is restored to capacity.

Conservatee: [While the judge is signing the order, Maryann breaks down into tears, and hugs her

friend from the board and care home.]

Time and the repetitiveness of the proceedings are perhaps the two most prevalent characteristics of the ritual of Probate hearings; they are also the two most frequently misunderstood. Indeed, the courts seem to have a keen concern for time, working diligently to expedite hearings and postpone contested matters until all other matters on calendar have been dealt with. By timing 249 drama cases, I found that the average length of time spent on each judicial matter before the court was eight minutes. Court time spent on various judicial hearings ranged from under one minute to one hour and forty-four minutes. Still, 56% of all drama cases observed were concluded in five minutes or less. The speed of the hearings helps to contribute to the formulaic drama of the court. Similarly, the repetitive nature of the questions and the constant references to fiscal matters contribute to the atmosphere of ritual which surround the creation of protective custody. Consequently, it is not uncommon to hear someone criticize the establishment of protective services on the grounds that the court hearing is nothing more than a public spectacle. To understand fully the relation of the formulaic drama of the public hearing to the creation of protective supervision we must also

understand the other components of the hearing which, though important, are invisible to the casual observer.

The file for each case before the court contains a number of important documents, including the following: a Petition for Appointment of Conservator, containing vital information about the proposed conservatee, a list of all relatives within the second degree; a description and estimated value of the property and value of the estate; a statement of the petitioner's reasons for believing the proposed conservatee is unable to provide for personal needs or manage his or her financial resources. Also contained in the file may be a Report from the Court Investigator providing information about the proposed conservatee's ability to attend the hearing, his wishes concerning the establishment of a conservatorship and his or her desire to be represented by legal counsel to contest the proceedings; a Declaration of a Medical Practitioner giving reasons for which the proposed conservatee is unable to attend the court hearing; a Notice of Hearing and a Proof of Service showing that all relatives and interested parties have been notified that a petition for conservatorship has been filed with the Court. In short, the file contains much of the information which is not brought out in open court as to the health, financial resources, and legal wishes of the proposed conservatee.

Similarly, as one judge told me about speaking into the public record:

> I've had people in the time that you were there come up to the bench, and with a strong alcoholic breath at ten o'clock in the morning. And not very responsive as to what their activities have been, and so forth, and so on. Well, I'm not going to blurt out on the record and say, well this fellow is drinking already this early in the morning. But these will be factors that will be in my mind as I make my decision.

Therefore, the five minute hearing which is so frequently criticized is only one aspect of the process, and provides the observer with only one type of information about the creation of protective supervision. Consequently, although drama cases comprise an important research instrument, they have built in limitations which must be recognized and understood. But if we keep these limitations in perspective, we can extract several important pieces of information from a review of drama cases.

One of the first impressions one receives viewing drama cases is that the system is primarily non-adversarial in nature, regardless of whether the case dealt with the establishment of a new conservatorship or the maintenance of an existing protective hold. Although the code is replete with provisions which allow two opposing attorneys the opportunity for vigorous debate over protective intervention, this adversarial model is not

employed in Probate Court. Rather, the system is founded on the premise that the proceedings are only initiated on behalf of the proposed conservatee. Thus, lawyers representing the petitioner or existing conservator were present in 92% of all drama cases, while lawyers, both private and from the Public Defender's Office representing the interest of the conservatee or proposed conservatee were active in only 10% of all observed cases. Consequently, in 90% of all drama cases, the person for whom a protective hold existed or was being initiated was not represented by legal counsel. This tendency may explain why the presiding judges in every Probate Court I attended took on the active role of inquisitor, asking questions and seeking to protect the rights of those individuals having no legal representation. As one judge put it, "in 95, 96, 97% of the cases...I have no lawyer standing out there, other than one lawyer, and so in a sense the court has to dig in." The adversarial model occurs only rarely in Probate and usually in connection with cases involving the control and use of money. One informant summed it up this way:

> In Probate Court there is not a natural adversary relationship because most of the time we're dealing with money, and the only time there is a conflict is if someone contests the way the money is being used.

Most of the lawyers who attend Probate hearings are privately employed. In fact, the Public Defender's Office was involved in only 6% of all drama cases. The public defender was generally appointed by the judge if the initial Investigative Report suggested that the proposed conservatee wished to contest the conservatorship proceedings, or if the proposed conservatee, at the time of the hearing, objected to the appointment of a conservator. For example, in one drama case an elderly man appeared in court with his son who was petitioning to become the conservator. During the hearing the judge asked the elderly gentleman if he objected to his son serving in this capacity, to which the man responded that he did. The judge then turned to the son and explained:

> Now, the problem is that every new conservatee has rights, new rights, even of jury trial, which may or may not be because of old age. Oftentimes objections are just symptoms of old age, but we'll appoint the public defender to talk to your father.

The case was postponed for one week until the public defender had a chance to meet with his client. The next week, the elderly man returned to court with the public defender as his legal counsel, and his son returned with his private attorney. The public defender explained that his client no longer wished to object to the proceedings, and the judge granted the conservatorship.

Moreover, lawyers from legal aid groups are seldom involved in Probate matters because these are generally considered to be fee generating cases and are consequently passed along to private attorneys. The only exception to this rule would be the case of a minor who had inherited property or had been abandoned with a close relative. In these instances, legal aid societies frequently help indigent people petition for guardianships over minors, since no money would be involved until the minor reached adulthood. In the case of an abandoned child, the establishment of a legal relationship would be required for the relative to collect government benefits for the child.

Thus, the legal professionals working within the Probate system come almost exclusively from private practice. Moreover, an analysis of all drama cases indicates that these private attorneys are primarily white, middle-aged males. Specifically, out of the 216 private attorneys observed in court, 84% are males, and 88% are Caucasian.

Nevertheless, even when present, private laywers in the Probate system have a rather insignificant role in the court hearing, since the vast majority of cases are uncontested. The most important function of the lawyer in Probate is the filling out and the filing of legal documents with the court. In fact, it is not uncommon for

lawyers to stand mute throughout a hearing, since most of the factual materials relevant to the case are already present in the file, and since the testimony is most frequently limited to that given by the proposed conservator who simply responded to direct questions from the judge.

In contrast, the role of the judge in non-adversarial hearings is unique. He actively elicits information from those before him, although in contested matters the judge allows the two opposing attorneys to present the testimony to the court before he seeks to clarify any issues which seem to be unresolved and makes a final ruling.

In fact, the non-adversarial legal model most frequently employed by the Probate Court gives the presiding Superior Court judge immense power and responsibility. The judges whom I interviewed were intensely aware of their power and, in particular, of the power vested in them to appoint legal conservators. As one judge said:

> You are about to lose your civil liberties. I am about to declare, find you to be an incompetent person. And that as an incompetent person, you will no longer have the right to contract, and you will not be able to select your place of residence; it's your conservator, your guardians, that will be able to select your place of residence. That you will not be able to own or manage property, that your conservator or your guardian will do that for you--that's heavy. That's a very significant thing.

> That is where the whole weight of society is coming down on one guy, you know, and it has to be dealt with delicately.

While judges were aware of their power and often spoke of their attempts not to abuse it, lawyers generally spoke of judicial power in terms of individual personalities. For example, according to these informants,

> You don't practice law for Christ sake, you practice personalities.

> Judges do have a great deal of power...As long as it's a good judge I don't have any problems with it. Bad judge, I have problems.

> There's no question but that an active judge takes care of a lot of the problems in a very pragmatic way, he just does. He's there, he's interested, he may be driving you nuts if that's your particular temperament. But he is interested, and he knows what he's doing. He knows what he's looking for. You'd better have the right answers, and they'd better be honest answers. With someone like [name omitted], you could probably throw away 90% of the safeguards that have been put in for the conservatees.

> I think probably in a majority of the cases, most judges will come to the same conclusion, and they may come to it for different reasons, and they certainly come to it via a different approach, and some may be unfairly intimidating, or rude, the way they go about coming to a decision. But the next judge over may be very polite and very nice and very patient and come to the same conclusion.

Truly, the effectiveness of the Probate system can be either undermined or enhanced by a particular judge and the power granted to him. Although this statement might

be applicable to many areas of law, the non-adversarial legal model most frequently employed in establishing conservatorships through Probate gives the presiding judge far greater discretionary powers than are ordinarily found in a court of law. This is not to suggest that Probate judges are free to disregard legal statutes, or that their decisions cannot be appealed or reversed. However, since formal opposition, opposing attorneys, judicial appeals, and demands for jury trails are not the norm of the court, and since the judge frequently has an active voice in the proceedings, the impact which judges have on conservatorship hearings is very formidable. Consequently, the experience, wisdom and intuition of judges is an important variable to be considered when viewing the establishment of protective services over those deemed mentally or physically unsound, especially since proposed conservatees are not automatically represented by legal counsel and their ultimate fate is seldom, if ever, decided by a jury.

Thus, drama cases are spectacles of judicial rules, rituals, legal documents, power and professional personalities. It is readily apparent, however, that this Court is in fact both a legal institution with the power to strip someone of his basic civil liberties and a human institution which will not hide behind statues and codes,

but which recognizes the human variable. As one informant explained,

> It's a human institution. And they're not making widgets, and they're not, you know, producing a product. They're trying, at least ostensibly, and probably they are, to make a rational decision that is in the best interest of the people that are before them.

Conservatee

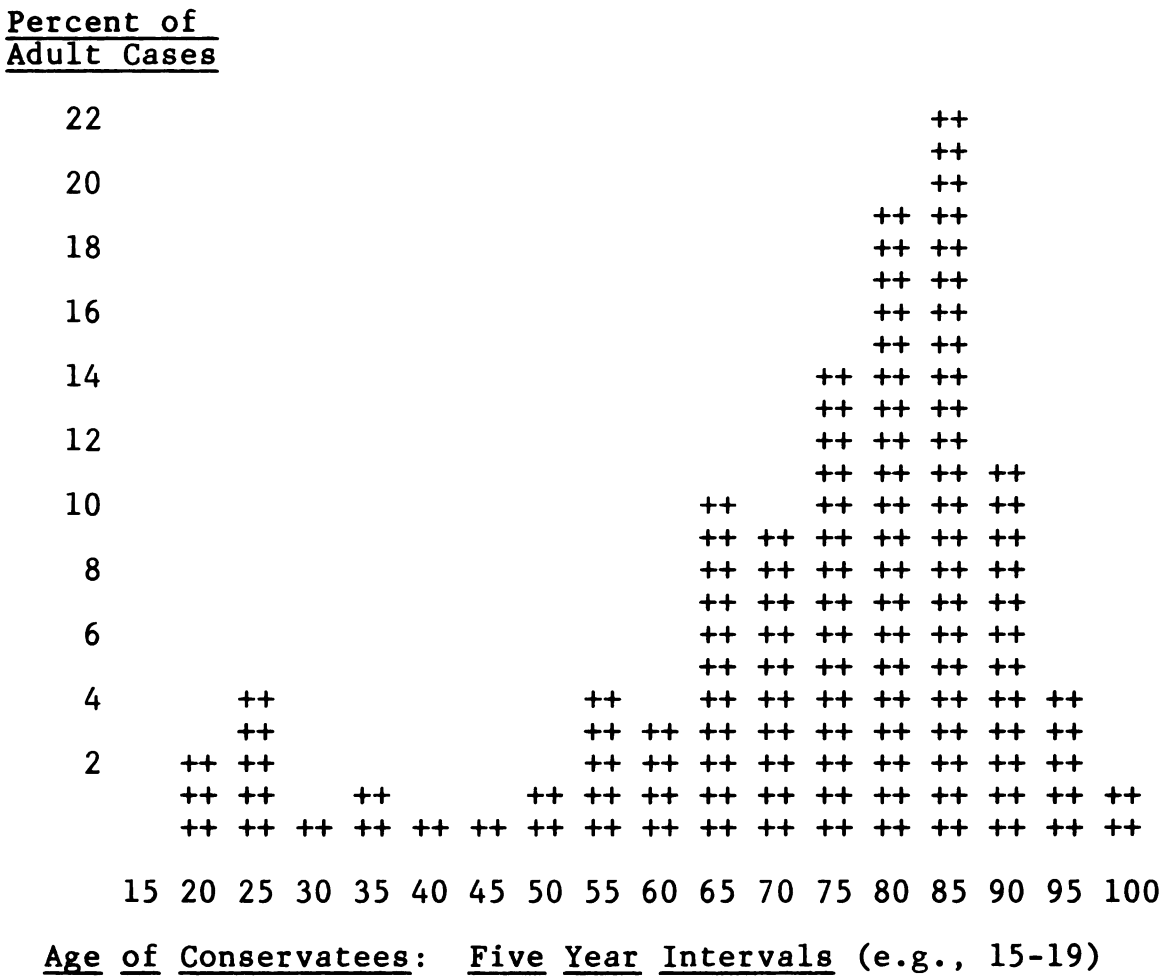
The following pages present a portrait of the conservatees who find themselves enmeshed in Probate proceedings. These persons must be found by a court of law to be unable "properly" to provide for their personal needs. In these cases the existence of a diagnosable mental disorder is not a factor.

Probate is a system which caters primarily to the young and to the old. As the data from the biennial review show (see Table II), 26% of all petitions before the court were filed on behalf of minors. In the 13% subsample (which excludes minors) we find that the mean age of adult conservatees is 75 years. Figure I is provided to show that the aged are overrepresented among adult conservatees. In fact, 89% of all adult conservatees under Probate conservatorships are 60 years of age or older, and 52% of all conservatees are 80 years of age or older. The mean age among female conservatees is 76, while males average six years younger, having a mean age

of only 70. But this six year difference is not significant since in 1970, the life expectancy at birth was 74 for females and about 67 for males.

FIGURE I

Subsample: Age of Adult Conservatees in Probate Court (N=246)



An analysis of the statistics compiled from the subsample shows that the ratio of males to females has not changed significantly over the past decade. That female conservatees made up 60% of the subsample, and males only 40% is, of course, understandable in view of the greater longevity of women and the preponderance of older people in the Probate Court. However, data taken from the subsample further shows that in individuals aged 18 to 59, the ratio of men to women is reversed: 60% are males and 40% females. This ratio seems to result from the greater likelihood that young males will be involved in some kind of debilitating industrial accident, and that they will be hospitalized more often for psychiatric problems than are females in the same age category.

Probate conservatorships generally last for the life of the conservatees. Out of the 300 cases studied in the subsample, 127 are still ongoing with the conservatee still under the legal administration of the Court. Of the 173 conservatorships that have been terminated, 152 of these, or 88% ended with the death of the conservatee. Only 12% of all adult conservatorships are terminated for such reasons other than death, for example, the conservatee recovered or that his case was transferred out of county. The average length of a conservatorship is difficult to predict since there are still so many ongoing

cases: 17% of the conservatorships granted in 1969 are still in effect. Of those which have been terminated, however, the mean length of time for which a conservatee was under protective supervision was 3 years and 73 days.

What this means, naturally, is that the average length of protection reported herein will increase as those conservatees presently under the guise of the court die, or have their conservatorships terminated for other reasons. There is good reason to speculate, however, that the mean length of time for conservatorships will decrease in the coming years, mainly because of the many legal safeguards which have been introduced by the legislature. Some informants suggest that the 45% decline in Probate petitions, as reported in the biennial review, is an indication that the legal community has changed its attitude concerning the applicability of protective services. Further, legal changes, such as the creation of court investigators, represent a direct attempt by State legislatures to assist those individuals requiring protection, and to eliminate those persons who do not properly belong in the system. In other words, legal safeguards have been effective in eliminating many borderline cases of persons who might have otherwise found themselves enmeshed in protective hearings, allowing the Probate system to concentrate its attention on those with the most

severe mental and physical problems. If this is indeed true, we may predict that there will be a reduction in the overall duration of conservatorships in the future.

By reviewing 186 cases in which complete subsample information was available it was learned that Probate conservatees are institutionalized 86% of the time, either in a nursing facility (44% of the cases), or in a psychiatric or physical care hospital (42% of the cases). While 14% of Probate conservatees are non-institutionalized by definition, the fact is that many of these people are housed in foster homes, board and care homes, or private homes where medical care and assistance are provided. In only 8% of the cases are the conservatees housed in non-protected environments.

Similarily, an examination of the medical records filed with the court (N=235), taken from the subsample, shows that 87% of all conservatees had at least one physical ailment, and 19% had two or more. It should be remembered that medical certificates were only required in cases in which the proposed conservatee was not present at the time of the hearing. Moreover, the quality of medical affidavits is frequently poor, and the information given in them insufficient.

The purpose of the medical affidavit is not to provide evidence of the need for a conservatorship, rather

only to confirm that the proposed conservatee is unable to attend court. The medical reports include pre-printed forms, handwritten reports, and legal briefs obviously written by lawyers and signed by doctors. The most common reasons given for failure to appear in court were "old age and disease," "physical inability," "advanced age," and "illness and injury." Other reports were more detailed, with the four most specific medical reasons given as "stroke," "cardiovascular disease," "fractured hip," and finally, "incontinence."

The medical reports also contained information concerning the mental status of those for whom conservatorships were sought. For example, 52% of all medical affidavits filed with the court made some reference to the mental ability or psychiatric diagnosis of the proposed conservatee. Once again the data were not specific, and the most popular label given came from a printed form and said simply "weakness of mind." Other equally common statements which made reference to the mental abilities of proposed conservatees included "senile dementia," "organic brain syndrome," and simply "incompetent."

The language of the medical reports and the rather careless use of medical and psychiatric labels are good indications of the relative unimportance of medical classification and diagnosis in the Probate system. To

illustrate, in one file the medical report was a pre-printed form on which were printed boxes designated "old age" and "weakness of mind," but further examination of the file showed that the person for whom conservatorship was requested was only 26 years of age. Similarily, a judge once said from the bench, "Counsel, your medical report doesn't say anything. Next time the doctor should read them, not just sign them." Consequently, an examination of the medical reports also casts doubt upon the validity of the specific diagnosis employed. However, that medical reports were filed in 78% of the cases is interesting, and the constant reference to age-specific problems, even though stated in layman's terms, is important because it reinforces what we already know about conservatees under Probate, that they are primarily institutionalized elderly.

What also emerged from the subsample data is that in 8% of the cases the conservatee not only had a Probate conservatorship, but was also under the protection of a concurrent Commitment conservatorship. In each of these cases the conservatee was being held involuntarily in a mental facility while under the power granted in the LPS Act, while his finances were being conserved and protected under the provisions of Probate law. This joint authority is unnecessary according to the law, but it does

reflect the county policy employed in San Francisco. That is, the LPS Act does provide a provision for conserving a person's estate while under a Commitment conservatorship, but the administration of the system in San Francisco has left a gap in service, so that there is no appropriate agency willing to serve as fiscal manager. Therefore, San Francisco is unique in the sense that a person in this county can find himself under the jurisdiction of two protective service courts, Commitment and Probate.

The final characteristics of conservatees, or proposed conservatees were not obtained through statistical compilation of court records, but rather through direct courtroom observations. For example, out of the 263 drama cases the proposed conservatee was in attendance only 39% of the time. Of those who attended court the ethnic breakdown was a follows: White, 57%; Black, 26%; Hispanic American, 6%; and Asian American, 11%. It should be noted, however, that the majority of Blacks, Mexican Americans and Asian Americans present in court were minors. Generally, minors were represented by legal aid society lawyers and frequently accompanied their lawyers to court.

The reason for which more adult or elderly minority citizens are not involved in the Probate system was explained in two ways by my informants. First, Probate is

primarily concerned with money and white people in our society generally have more to conserve and protect than do minorities. As one lawyer said:

> Well, I just see the basic problem is money. You're dealing with old money, and you know people who come into Probate Court, say, who may be in their sixties, seventies, eighties, acquired that money over a period of time when many black people weren't able to acquire a lot of money and property, and that's it.

Another jurist phrased the same thought:

> I would conclude that the majority...of the subjects for conservatorship are white. I would speculate that the reason is that usually people can arrange to take care of the physical well-being of an elderly friend or relative, but it's more difficult to handle their finances, and of course, our society being what it is, the whites tend to have more of the goodies, and therefore there is more reason to have a legal protection for the goodies, because the kids wanna make sure that they're not spending the money on 18-year-old girl-friends and taking trips around the world and what have you. That's a rather cynical statement of mine, not intended necessarily to characterize the motivation. But since there is more money to be protected in the white community than in the black community, for instance, there's more reason to have conservatorships.

The second interpretation given by informants for the relatively small numbers of minority citizens in the Probate system was that minorities have stronger cultural ties than whites which serve in place of formal legal intervention. The following quotations exemplify the

attitude most commonly held by those professionals interviewed:

> I think it has to do with a way of dealing with the nuclear family that is different. I'd say that probably most blacks and Hispanic people keep their disabled folks closer to home, like say developmentally disabled children and older people.
>
> It seems that most of the minorities are relatively tight; seem to be a tighter community.

Forty-two percent of the proposed conservatees who attended court were minors, 18% fell into the age group of those 18 to 59, and only 40% could be labeled as elderly (60+). Since, minors only make up 26% of all petitions, we can see that they are overrepresented in court hearings. Moreover, of those adult petitions filed with the court middle aged persons make up only 11% of the total, and those 60 years of age and older make up 89%. Consequently, minors and middle aged conservatees attend their hearings more frequently than do the aged. Given the physical infirmaties common to the elderly study population it is not surprising to find that they cannot, or do not wish to attend court on their own behalf.

Similarly, an analysis of the males and females in attendance showed that males were in court 49% of the time, and females 51%. Again, when compared to the normal male/female ratio of 40% males to 60% females we see that

males attend court more frequently. This, however, is less a fact of sex than of age, given the large number of elderly enmeshed in Probate proceedings.

Perhaps the best summary of a typical conservatee was given by an informant who outlined the following characteristics:

> I would say typically white female, average age, late sixties to mid-seventies...income or overall estate, valued at maybe, between fifty and one hundred thousand, may include real property...Typically convalescent hopsital, either ICF or skilled nursing facility. Fairly disoriented, fairly confused, if they're lucid they're generally slipping in and out of lucidity...being in a skilled nursing facility, by definition, assuming it's a correct placement and most of the placements we find I'm afraid to say are fairly correct, the most they may be able to do for themselves is clothe themselves and feed themselves, not including food preparation. It is most likely including some type of problem with incontinence, at least with bladder, also the bowel. Generally if they're able to ambulate it's not being able to get out on their own.

Conservator

A conservator, under Probate law, is a person who has been appointed by the court to care for a conservatee's person, estate, or both. The powers and authority granted by law cover such areas as fiscal responsibility, determination of the conservatee's residence and domicile, and even possibly authorization of medical treatment if

such treatment is ordered by the court. Historically, however, Probate conservators have been most heavily involved in estate management, which ranges from the buying and selling of stocks and property as appropriate in large estates, to the management of smaller estates in which grocery shopping and the paying of the public utility bill is all that is required.

The legal relationship which gives one adult immense responsibility over another, especially when that relationship involves money, is a very delicate one. Alexander and Lewin in their study of surrogate management and the aged in New York reported that "actions commenced by private persons were frequently inaugurated to protect some specific or general interest of the petitioner" (1972:76). The view that money breeds corruption is not new to my informants, many of whom spoke of the close association between money and greed. For instance, one informant described conservatorships as often characterized by "enlightened self-interest on the part of particular family members."

Yet, as another informant said, a major task of the court was to ensure that the quality of care being provided was in fact commensurate with the size of the estate:

> Sometimes we go out and see somebody and they are living in a board and care home,

> under every kind of menial [sic] sort of environment, and we find out that they have an estate of several hundred thousand dollars, and we see that it is being conserved until the ward or conservatee dies, and then the conservator collects.

Indeed, it was not unusual to observe cases in which one felt, as observer, that the conservator was more concerned with protecting the estate for personal reasons than with using the available assets to assist the conservatee. For example, in one drama case, the standard of care was being questioned because an elderly man was being housed in a slum hotel, and being fed licorice and Cracker Jacks; upon medical examination he was found to be suffering from numerous insect bites. A concerned community agency became involved in this particular case and, because of their persistence, the matter was brought before the presiding judge who removed the conservator for failure to perform the duties prescribed by law.

Although it would be possible simply to recite one horror story after another concerning the exploits of greedy conservators, it would be a gross injustice to assume that all conservators are acting solely on behalf of some vested self-interest. Abuses within the Probate system do exist, for there is enough flexibility in the law to allow a shrewd person the opportunity to take advantage of the power granted him over another. But most of my informants agree that conservatorships, in general,

have been established for all of the correct reasons, and that the conservators are acting in the best interest of the conservatees. My observations would support the feelings expressed by the majority of my informants one of whom said:

> The majority of the motivations that seem to exist are not ill placed, they're not misplaced. There definitely is a concern to care for the invalid, the individual unable to manage their affairs for whatever reasons.

In addition, any professional working in the field will lament the difficulties which he encounters in trying to find a responsible person willing to serve as conservator for another. Family members, friends, and even public service agencies have shown considerable reluctance to accept such legal responsibility. While most of my informants firmly believe that it is easier to find a person willing to serve if the conservatee's estate is substantial, this fact may be only in part a consequence of greed. That is, the more sustantial the estate the easier it is to secure quality care and services, for which there are funds available. If medical, legal, and homemaker services can be provided out of the estate, the overall burden borne by the conservator is greatly reduced. In cases in which the estate is small, the acting conservator must take on greater personal

responsibility and, in many instances, must financially support the conservatee. It comes as no surprise, then, that a great many people for whom conservatorships would be advantageous are unable to receive services because no one is available or willing to serve in the capacity of conservator. I think this point was best illustrated by a gentleman who, when questioned by the judge about his reasons for wishing to become conservator, simply replied, "Because there is no one else."

With this range of motives in mind, let us now look more closely at those individuals who choose to become conservators. The appointment of a conservator becomes effective once the conservator takes an oath to perform the duties of the office according to law and files the required bond as set by the court. These two tasks are accomplished through the issue of "letters of conservatorship" by the Clerk of the Court.

A statistical review of the subsample data shows that letters were issued in only 85% of the cases, because 15% of the adult petitions filed with the Court either were never ruled upon or were denied. Thus, in these cases letters of conservatorship were never processed. In those 256 cases which were approved, a total of 294 letters were issued because Probate provides for the appointment of co-conservators, that is, of two or more

persons with joint authority over a single conservatee. Co-conservatorships were established 14% of the time, and although these usually involved two conservators, there were cases in which three persons were appointed to oversee a single conservatee. Still the vast majority of cases, 86%, involved only one conservator.

The letters issued by the Court indicate that members of the immediate family were most often--that is, in 48% of cases--appointed as conservators. Of the remaining letters, 35% were issued to professionals such as lawyers, doctors or the Public Guardian, and 16% were issued to friends. Under the category of family the specific breakdown of letters is as follows: sons were appointed in 25% of the cases, daughters in 16%, nephews in 9%, sisters in 8% , and finally, nieces in 7%. The remaining letters which went to the family, comprising 35% of the total, are distributed among the other twenty categories of relatives coded; however, no single other listing had over 3% of the total. Of the letters sent to professionals, 52% were issued to the Public Guardian, while bankers received 28%, and lawyers 12%. The remaining 8% were distributed among doctors, community workers, accountants, and government employees, but none of these groups had over 3% of the total. In the final category, female friends were more likely than male

friends to serve as conservators: female friends received 58% of all letters, male friends 42%.

If we look only at the overall totals and ignore the larger categories of family, professionals, and friends we see the actual ranking of conservators. The list from highest to lowest would read as follows: Public Guardian (18%), sons (15%), bankers (10%), female friends (10%), daughters (8%), male friends (7%), nephew (4%), lawyers (4%), sisters (4%), and finally, nieces (3%).

The statistics further prove that in 80% of all cases approved by the Court the petitioning party is also the person to whom letters of conservatorship are issued. In 17% of approved cases the proposed conservatee filed the petition for conservatorship. Finally, in 2% of the approved cases petitions for conservatorship were filed by persons other than the proposed conservatee requesting that the conservatorship be granted and that letters be issued to a third party. Thus, in the vast majority of cases, the person who seeks to have a conservatorship established is the same person who wishes to be appointed conservator.

The second finding worthy of note is that the proposed conservatee frequently files the petition seeking conservatorship, a procedure allowable under Probate Code

if he or she can establish a good cause for the appointment. In many cases, Probate conservatorships are voluntarily requested by those who feel that they need the type of assistance which can be provided by means of Probate conservatorships. Moreover, proposed conservatees may nominate a conservator in the petition or at the hearing. Indeed, a statistical review of the subsample data reveals that nominations by proposed conservatees were filed with the court 30% of the time.

Given what we already know about the lack of conflict in Probate hearings, the large number of nominations filed, and the high approval rate of conservatorship petitions, it is not surprising to find that the appointment of conservators is done without conflict or dispute in most instances. Furthermore, it is reasonable to suggest that in Probate we are not always observing the creation of "protective services," but rather, are frequently observing the legal implementation of "preventive services" in which the proposed conservatee not only accepts without hesitation the appointment of a conservator, but may actually assist in the legal preparation.

It is not unusual to observe an articulate, healthy looking elderly person come before the court and request that the conservatorship be approved. For example, in one drama case the son filed a petition to have his father

placed under a Probate conservatorship. The father, an elderly white male was asked by the judge, "Do you have any objections to your son serving in this capacity?" The man replied, "Absolutely none." Or, as in another case in which an elderly, white female in excellent health was before the court:

Judge:	Do you understand that Mrs. Jean has petitioned to be your conservator and care for you and that Crocker National Bank will be the conservator of the estate? Do you understand this?
Proposed:	Yes.
Judge:	I want you to know that you have the right to oppose this.
Proposed:	I know, I don't.
Judge:	I guess that is as good a record as I could get. Petition granted.

Still, a third example of a frail looking elderly, white male who appeared before the court and requested that his male friend of fifteen years be appointed to serve as conservator, and when the judge asked him if he understood that a petition had been filed and what it meant, the man replied in a strong voice, "Yes, I want him to handle my affairs."

The point here is that in a large number of cases the conservator is acting at the request of the conservatee, rather than having initiated the proceedings because the proposed conservatee is unable to function in society. In other words, conservators may be appointed

because the conservatee is institutionalized and unable to handle his or her own affairs, or because the conservatee is simply tired of trying to remember if the phone bill has been paid and simply requests that a concerned individual, generally a family member, be given this responsibility.

Kith and Kin

According to Probate law a notice of hearing must be sent at least fifteen days before the hearing to the spouse, if any, of the proposed conservatee, and to all relatives within the second degree as stated in the petition. An analysis of these notices was undertaken on the subsample data. All 300 files were examined to determine the number of relatives contacted, their relationship to the proposed conservatee, the role or action, if any, they had in the proceedings, and finally, the sex and residence of those to whom notices were mailed.

The actual number of relatives contacted per petition ranged from zero to sixteen. In 22% of all cases the proposed conservatee reportedly had no family. Forty-nine percent of the entire sample had between one and three relatives who were notified of the proceedings, and 29% had between four and sixteen relatives who were sent notices. The mean number of relatives for the entire

sample was three. Of the 826 relatives who were contacted in regard to the subsample petitions, 48% were males and 52% were females.

Not everyone who was sent a notice of the hearing attended the proceedings or even took an active role in the conservatorship process, though, 190 persons, or 23% of those sent notices did. I examined each court docket to determine in what capacity the person named in it had functioned. For example, family members may have filed the initial petition, received letters, filed objections, or even filed a counter-petition to protest the appointment of the proposed conservator as set forth in the initial petition. The number of males and females taking on active roles was approximately equal, with males participating in 52% of the cases and females in 48%. Seventy-eight percent of those family members actively involved, or 149 persons, were responsible for the filing of the initial petitions which came before the Court. Sixteen percent, or 31 family members were the recipients of letters of conservatorship even though they did not file the initial application. And finally, 5%, or only 10 family members were involved in active disputes in which they filed formal objections or petitioned the court with a counter-petition, that is, filed a petition in response to the original in which they requested to become the

conservator. This means that only 10 family members out of a possible 826--all those notified that conservatorship proceedings were being initiated against a kinsman--formally objected to the proceedings.

The ranking of those family members who chose to participate in adult conservatorship proceedings did not change, regardless of their role. Thus, the five primary participants were, in descending order, sons, daughters, nieces, sisters and nephews. Moreover, of those 185 relatives who had taken on an active role, in the subsample, 92% reside in California, and of these, 83% live in one of the Bay Area counties. Only 7% of those actively involved resided in another state, and only 1% live outside of the United States. Furthermore, of all those relatives participating in Probate commitments, 61% resided in San Francisco. Thus, distance does seem to be an important factor in determining who is willing or able to participate in Probate proceedings. The subsample data clearly show that the vast majority of relatives involved in commitment hearings maintain close physical proximity to proposed conservatees. In fact, in 83% of all cases the active family member's residence is within fifty miles of San Francisco.

Another testament to the importance of family ties in Probate proceedings comes from data obtained from the

drama cases. Courtroom observations of actual hearings confirmed that at least one relative was in attendance at 71% of all drama cases. Moreover, many of these persons had no active role in the actual proceedings per se, but rather, were in attendance only as concerned observers. Thus, in many respects, Probate Court may be viewed as a family court because it routinely involves members of the immediate family, whether as conservators, petitioners, or information brokers who do not actually serve as conservators per se, but are nevertheless actively involved in obtaining needed services from others, particularly from banks and professionals. Thus, Probate conservatorships are not always initiated because the family system has deteriorated to a point at which there is no one left to care for the mentally or physically frail. Instead, they are very often requested to help enhance the powers ordinarily held by the family. Therefore, as the data on family involvement indicate, the Probate system is not primarily involved with the creation of surrogate families, but rather, with enhancing familial ties which already exist.

This function results, at least in part, from the legalistic nature of our culture in which familial obligations and customary responsibilities may be supplanted by legal codes and statutes. For example, it may

be logical to assume that a daughter or son is the proper person to take charge of fiscal responsibilities in the event that their aging widowed mother suffers a stroke and is rendered incapable of independent action. However, it is equally true that the bank with whom the incapacitated person has her checking account will not recognize or honor this familial relationship. Therefore, children or other concerned relatives faced with just such a situation must go to court and establish a legal relationship which is acceptable to the banking institituion. Simply put, in many cases family members are forced to engage the legal system in order to accomplish something which has traditionally been handled by the family, namely, caring for one of its members. In this respect, Probate Court is steeped in traditional assistance patterns as practiced by the family.

Occasionally, however, conservatorships are needed, or requested, for individuals who do not have family members who are capable or willing to function in the capacity of conservator. In these instances the burden is frequently passed along to neighbors and friends. Neighbors and friends filed 40 of the 300 petitions reviewed in the subsample; 13% of the cases before the court. Female friends initiated 7% of these, while male friends were only responsible for 6% of the initial petitions before

Probate. Moreover, out of the 294 letters of conservatorship issued via Probate, female friends and male friends combined received 16% of them. Specifically, female friends were the recipients of 10% of all letters, and male friends were issued letters in 7% of the cases. Both the number of petitions filed by friends, and the inflated number of letters received demonstrates that friends play an important role in conservatorship proceedings.

Frequently it is the neighbor who notices that a problem has occurred and signals for assistance. Generally they notify relatives so that proper action can be undertaken to safeguard a vulnerable person. In many cases, however, family support is not available and the neighbor may represent the only viable option short of total care as administered in an institution. Thus, friends fulfill many of the functions which a family would ordinarily assume. An informant who works in the community summarized the role of friends and neighbors as follows:

> We found any number of cases where somebody would call us to say my neighbor is in trouble, 'I'm afraid they are going to burn their house down and my house too.' That was the most common complaint. Afraid that they were going to forget to turn the gas off. 'I'd go to see them regularly and they are getting worse and I can't tolerate it any more,' and essentially they were saying bring in the men in the white and take these

> people away. And we would send a team out and very frequently those people became the allies that you needed to keep the person at home.

Indeed, the successful application and implementation of a Probate conservatorship is dependent on persons--whether neighbor, friend or blood relative--who fulfill the function of the family. A statistical review of all drama cases showed that 83% of the time a member of the immediate family, or a close personal friend attended the hearing. Yet, not all of these persons had a formal role; that is, they did not all function as petitioners or as conservators. However, many of these persons did beome advocates in interceding between the frail individual who needed protective services and the Court. For example, while a neighbor may be unable or unwilling to file the actual petition for conservatorship, he is frequently the person who contacts a relative, a bank, or the Public Guardian's Office in an attempt to find someone who is willing to serve in that capacity.

Unfortunately, however, the case of the individual who truly needs the services and protections afforded by law, but does not have contact with anyone capable of pursuing legal action will probably never come before the Court. Protective supervision as administered under Probate law is a reactive system which operates only when

petitioned to do so by an interested party. As one informant stated when speaking about the need for an advocate:

> There's no one to get it into court. There's no one to bring it in front of a judge, because there's no family or friends or any individual who's gonna petition the court, and the Public Guardian's Office won't do it.

Although in theory anyone who meets the legal criterion of being unable "properly" to provide for his or her personal needs is eligible for the protection of the Court, the fact remains that without an advocate, access to the judicial system is severely limited, if not blocked. Furthermore, community agencies, legal aid societies, and medical facilities have had little success in placing individuals under the auspicies of the Probate system if an advocate cannot be found.

The Public Guardian's Office, which was established to act as conservator when no one else was available, has been remiss in its failure to accept all classes of persons who might require services. For example, during this study the Public Guardian's Office maintained a policy in which it refused to assist anyone who did not have a minimal estate of $6,000. As a consequence, those mentally and physically frail who do not have a viable support network and who cannot meet the financial restrictions imposed by public agencies may be effectively

blocked from receiving the services provided by the Probate Court. One of my informants summarized the importance of the family very simply by saying:

> If you have family, no matter how little money you have, chances are you would be provided services because you have somebody looking out for you. I mean even if it means working through the system so grandma has to go into a less desirable facility but at least a facility that would accept Medi-Cal, the family can be the advocate for grandma. But if there's no family then we're in deep trouble. I mean everybody's in deep trouble.

Economics

Money management is the main issue in most Probate conservatorships. Protective services are frequently the last resource available to persons who find themselves burdened with a relative or friend who is mentally or physically unable to conduct his own financial affairs. Often the family of such a person seeks a Probate conservatorship because they must deal with a financial crisis but lack the legal authority to make the necessary arrangements. In our society a variety of alternatives exists to the forms of fiscal management offered by Probate, particularly in the cases of people of means. For example, we have the informal systems in which, somewhere along the line, a person's property and bank accounts are placed in joint tenancy with a relative who

now assists with the paying of bills and the financial upkeep of property. With larger estates, a more convenient system might be a living trust administered by a bank, and sometimes powers of attorney are used to assist a frail person in caring for his possessions.

Most professionals with whom I talked believed that Probate conservatorships are not the mechanism of choice but that family, friends or neighbors of a frail person were frequently forced to use this system because a crisis situation occurred before another mechanism could be employed. Reasons given for wishing to avoid Probate included the inconvenience of having to attend a judicial hearing and having one's personal affairs discussed in public, the large amount of paper work which is required by the court, and the yearly fiscal accountings and biannual inspections by court investigators. Nevertheless, the power to administer another's estate must be transferred prior to mental deterioration, or as one informant said, "If they allow it to get to the point where they can't sign anything, then you have no alternative but to go through conservatorship." There are, of course, situations in which Probate is the logical choice, but in a great many instances the full panoply of conservatorship law is unnessary for the average person requiring assistance with money management.

If money and the myriad of issues surrounding the handling of property is indeed a central theme in Probate, then we must view the circumstances under which the system is invoked. Very often problems arise because a mentally frail person forgets to pay the landlord or the public utilities bill, or perhaps pays them more than once. Often a matter will come before the court because someone took advantage of a mentally frail person and tricked him into purchasing a new furnace or roof which he did not need. Occasionally, an elderly person will voluntarily request that his children be appointed conservators of his estate so he need not be burdened with balancing a checkbook or paying bills. Thus, Probate law may be used by well intentioned individuals as a means of conserving and protecting the estates of those whose weakness of mind renders them partially or wholly incapable of making rational decisions.

Not all motives, however, are pure and the allure of large estates and wealth can arouse morally questionable responses in the families of an infirm individual. The Probate system is experienced in dealing with these. One common attempt to abuse the system takes the form of relatives petitioning to be appointed conservators so that they can conserve their inheritance, rather than

serve the best interest of the conservatee. As one informant said:

> Probate court is mostly in terms of competency to handle property. And it's the family that gets concerned over how property's being handled, so they're much more apt to get involved, because there's something for them in it. They become managers of the property, they can save it, keep it from going down the drain, of being sold for unpaid taxes, things of that sort. So they have a reason to be involved.

While personal greed or self-interest may not be the best reasons for which individuals become involved in a Probate conservatorship, when properly policed by the Court, these hidden motives can be recognized, and potential harm to the conservatees may be avoided. In fact, many positive benefits may actually be realized by the conservatee simply because someone was interested, regardless of the motive which precipitated the interest. Consequently, once a conservatorship is established and is functioning under the "eyes" of the law, the motives become less important than the simple fact that someone has addressed the problem. Thus, as a by-product of greed, for example, an elderly person may receive the supervison which is needed, and because the court is reviewing all actions taken by the conservator the chances for abuse are reduced.

Finally, the actual size of the estate becomes an issue in Probate because this court does not have the auxilary structures or services necessary to accommodate indigent individuals. It is expensive to establish a Probate conservatorship because to do so generally requires the services of a lawyer. Also in most instances, the conservator is reimbursed for his or her services. Expenses increase if a bank is appointed as the conservator of estate, that is, if a bank in San Francisco could be persuaded to take a conservatorship. As one informant said:

> The rule of thumb in San Francisco is that a $1,000,000 conservatorship will produce a fee of $7900...That sounds like a fair amount of money, but if everyday you're arbitrating disputes between nurses about who worked overtime and who didn't work overtime, and your've got bills coming in from twenty-seven different department stores that have to be paid, you can end up losing money...I don't like to look at a conservatorship that's less than a couple of hundred thousand dollars.

So while smaller banks will sometimes take estates of lesser value, in general, banks avoid involvment in conservatorships because of the financially unprofitable nature of the effort involved. These financial realities make Probate conservatorships inaccessible to those frail individuals who have only small estates and limited resources unless a friend, relative or other agency takes over fiscal management.

The plight of these individuals is made even more acute by the policy of the Public Guardian's Office--the public agency capable of assisting those without funds or conservator--requiring potential conservatees to have $6,000 in assets. Then, too, where the individual estate is small or does not exist, relatives are often unwilling to take on the financial burden which conservators may incur. So in effect, the Probate system is most successful in meeting the needs of persons with middle and upper incomes, even though the law contains provisions for the assistance of person of all socio-economic levels. The reality of the situation is that in the majority of cases only the individual with either a support systems--family or friends--willing to assume economic liability for him, or an estate large enough to meet the expense of conservatorship find themselves in Probate proceedings.

Caution must be used in examining estates, because they are not always what they appear. For instance, Probate estates may consist solely of a home, which over the years has taken on an inflated value. Thus, it is not uncommon for an elderly person to come to court with what appears to be a substantial portfolio, in which the home, closer examination reveals, is the only valuable possession. Now, while a $50,000 house might seem like a tidy inheritance to a potential heir, to the resident it is

viewed differently, for to him it is not a potential source of capital, but rather, it is his domicile. Consequently, while many of the cases which come before Probate appear to contain substantial property, they frequently represent nothing more than the urban equivalent of being "land poor." Therefore, when reviewing the data extracted from the subsample on the value of Probate inventories, it is necessary to remember that freqently these inventories consist predominantly of real property. Although persons engaged in Probate proceedings are not necessarily poor, the non-liquidity of their resources makes such resources difficult to employ for conservatorship purposes.

Once the court grants a conservatorship, the conservator is required by law to file, within 90 days, an inventory attesting to the value of the conservatee's estate. Further, when a conservatorship of estate is terminated, for whatever reason, the conservator must present the court with a final inventory. A review of 205 initial inventories, as presented in the subsample data, showed that estates ranged from those with a zero balance to those with a balance of over one million dollars. The mean inventory for all cases was $104,289. Moreover, 27% of all inventories filed showed assets in excess of $100,000, and 18% of the sample disclosed inventories

between $50,000 and $100,000. Thus, 45% of all conservatorships of estates had inventories in excess of $50,000.

At the other end of the spectrum, 22% of the subsample had incomes which ranged between zero and $6,000. Most of these were filed by the Public Guardian's Office (71%) before it instituted the change of policy which excluded people with estates of under $6,000 from services. The large number of estates having less than $6,000 demonstrates, first, that the Probate system can be used for indigent persons, and second, that families do not use the legal protections afforded in Probate for their poor relatives. The remaining portion of the sample, 33%, had estates which ranged between $6,000 and $50,000. What the initial inventories demonstrate is that Probate is not a poor peoson's court. A great deal of money passes through it, and in fact, the Probate system is primarily in the business of appointing money managers.

The Court is also interested in protecting the estates of conservatees against inappropriate use by conservators. This becomes a delicate issue when family members request that bond be waived on the grounds that they are blood relatives and only have the best interest of the conservatee at heart. However, as one judge said when speaking about his reluctance to issue bond waivers to relatives:

> There may not be comprehension by that individual [proposed conservatee] to understand that even nephews can take monies from aunts' and uncles' estates, or children can do so...but our experiences have taught us that children get money and they borrow against their parents estates, intending to pay it back, and then sometime down the line they don't do it.

Consequently, the Court has an obligation to protect the conservatees from the very same people whom it has appointed to look after them. To accomplish this end, the Court establishes bonds to insure that the conservatee's estate is insured from misappropriation. Banks and the Public Guardian's Office are exempt from posting bonds. Thus if an abuse does occur, the estate has been properly protected. The setting of bonds is so common in Probate that one of the most commom features of any hearing is the presence of the bondsman, who attends court regularly and, after the judge establishes the amount of bond, may be seen actively trying to sell his policy to the lawyer of record. In Probate Court the mean bond, as computed on the 157 subsample cases in which bond was set, is $49,700. The purpose of bond is to safeguard the conservatee in the event that his funds are misused, but in no way does it deter abuse, and moreover, bond is not established in all cases.

To contrast initial with final inventories filed with the Court allows us better to understand the successfulness of the estates involvement. Taking into account all subsample files which had both initial and final inventories (N=129) we can see that 43% of all conservatees' estates appreciated in value while under the supervision of the Court. Moreover, 4% of those which began with a zero balance ended with a zero balance. Finally, 53% of the estates placed under the legal protection of a conservator suffered depreciation.

The average conservatee's estate gained $262.00 in value over the duration of the protective hold. The largest appreciation of any inventory was $139,170 and the greatest depreciation was $39,397; however the magnitude of these fluctuations in value is, in each case, relative to the size and nature of the estate and to the type of services which the conservatee required. For example, a $50,000 home which was sold in order to defer the expense of a quality nursing home is bound to reduce the size of any estate. While, if an estate consists of a large stock portfolio and the conservatee can be cared for at home then the chances are good that the value of the estate can be maintained. In fact, large estates frequently petition the Court for the authority to give gifts to relatives so that the taxes paid by the estate can be reduced.

Although there were gains and losses incurred in every economic category, and by every type of conservator, the estates of those who entered the system with few, if any, resources benefited most from the protective environment created by the Court, since in most cases, the Court appointed someone capable of ensuring that the conservatee received all of the social benefits to which he was entitled. Conservators were given the legal authority needed to enroll the persons under their charge in welfare programs, social security plans, and even to collect work pensions which the mentally or physically impaired might have failed to collect. Thus, in a few instances, Probate conservatorships can greatly enhance the value of the estates of those indigent persons who were unable to act as their own advocates.

The irony of the Probate system is that the people who benefit most from this type of protective service--the poor--are also most frequently excluded from participation in it and, fiscal protection is therefore unavailable to them. The Probate system is most frequently used by persons of means; yet, in most instances these are the people who have other options for custodial assistance available to them. Indeed, professionals in the world of finance view Probate as extremely cumbersome because of the unnecessary expense, massive amount of paper work, and

costly court time with which those involved in the system are faced. Thus, whenever possible these professionals seek other avenues of financial assistance and security for their clients.

The person who receives only social security benefits, however, does not have the capital necessary to obtain the help of lawyers or bankers, and few services are available to such indigent persons in need of assistance to conserve and protect their property. Moreover, an examination of the subsample data shows that over the past ten years, the Probate Court has assisted fewer and fewer such persons. Specifically, from 1969 through 1971, 35% of all Probate conservatorships of estates entered the system at values of less than $6,000. From 1973 to 1975, the percent of those with less than $6,000 decreased to 18%. Finally, in 1977 through 1979 the number of persons with estates valued at $6,000 or less fell to 13%. What the subsample statistics show is that the Probate Court, which has always been preeminently at the service of the well to do, is tending more than ever to exclude the poor.

Contrary to popular opinion, the poor require the services of a money manager as much, if not more, than do the affluent. Clearly, the consequences of being swindled out of a monthly welfare check can be far more devastating to a poor person, than would be the equivalent loss to a

person of means. Such a loss can result in the poor person's finding himself on the street without food or housing. Moreover, once on the street he runs an excellent risk of being institutionalized, either by the police, or by the mental health system.

Too often the Probate system is characterized as an environment which allows greedy individuals to prey on the misfortunes of their relatives. Without question, this kind of abuse does occur, but probably less often than one would suspect because of the added protections provided by the new legislation passed to protect the civil liberties of conservatees. It gives, for the most part, adequate protection to those for whom conservatorships are established. The main problems with the Probate system are not to be found in the Court itself, but rather, in the unwritten criteria which exclude poor people from realizing the protection and services provided by Probate law.

Conflicts and Disputes

One of the stated purposes of this study was to examine the conflicts and disputes which accompany the legal creation of a protective hold. I had at first thought that any legal arena which had the power to deny a fellow citizen his or her basic civil liberties would be fraught with conflict. However, closer examination

revealed that the Probate system operates relatively free of such conflict. But while the types of disputes which I had expected to find did not in fact exist, a number of informal areas of conflict (informal conflict being defined as areas of dispute in which no petition or motion was presented to the Court), or potential conflict, did emerge. This section will define both the areas of conflict which exist in the system and perhaps, more importantly, those areas from which conflict and disputes are absent.

The biennial review presented a statistical summary of Probate petitions denied between 1969 and 1979 and showed that less than 1% of all petitions before the Court were denied. Further, a review of the number of formal objections filed during this same period revealed that this number was also extremely low with objections being raised in only 3% of the cases (see Tables IV, and V).

A detailed examination of the subsample data, which summarizes 300 individual files, shows that formal objections were filed in only eight cases, and so confirms the 3% figure documented in the biennial review. Of these only one opposed the establishment of the conservatorship itself, while the other seven were addressed to various other issues. One was filed by the Unification Church and concerned religious freedom; six concerned the issue of

which individual should be appointed conservator for infirm patients. Moreover, by examining the persons responsible for the filing of objections we see that families filed six out of the eight, the Unification Church and a proposed conservatee joined together to file another, and in the last instance, the proposed conservatee was the sole complainant.

First, not a single jury demand was made in any cases reviewed, even though the law makes ample provision for such demands. Second, examination of each file disclosed that where withdrawl, amendment, or dismissal of petitions had occurred, such actions were seldom the result of formal objections.

The relationship between the medical and legal professions within the Probate system also was relatively free of conflict. Although the meeting of the two professions--when, say, doctors must sign affidavits concerning proposed conservatee's impairments, or even testify in court--would seem to provide opportunities for conflict, in the eight months which I spent observing drama cases, not a single medical-legal conflict occurred. Moreover, medical doctors and psychiatrists rarely attended jurial hearings in Probate. One of the reasons for the absence of conflicts over medical diagnoses is that the Probate Court in San Francisco refuses to grant rulings of

incompetency without a hearing. Therefore, lawyers who settle for a conservatorship without the finding of incompetency are able to eliminate the need for medical testimony before the Court. Besides, according to my informants, it is very difficult to persuade medical doctors to testify that one of their patients is incompetent.

Another possible cause of conflicts consists of the reports of court investigators, whose job it is both to interview those proposed conservatees unable, for medical reasons, to attend the judicial hearings and to make periodic reports on those conservatees already under the jurisdiction of the Court. These investigators are required to advise the proposed conservatee of contents, nature, purpose, and ultimate effects of petitions concerning them. They then advise the Court of the proposed conservatee's condition and state whether or not they feel that the person wishes to object to the proceedings, have legal counsel appointed or perhaps even demand a trial by jury. Yet, a review of the investigative reports as filed in the subsample data (N=95, investigative reports only filed when conservatee did not attend the hearing) indicates that in 97% of all reports submitted to the Court, the investigator recommended that the conservatorship petition be approved, or as in the cases

of the periodic reviews, that the conservatorship be continued. In only 2% of the reports did the court investigator recommend that the petition for conservatorship be denied, and in only 1% of the cases did he request that the court appoint legal counsel to represent the proposed conservatee.

It is conceivable that the introduction of court investigators into the Probate system has contributed to the reduction in petitions placed before the Court in recent years. If, for example, a lawyer knows that an officer of the Court will interview the proposed conservatee, and if there is uncertainty over whether or not this person truly meets the criteria for establishing a conservatorship, the petition may never be filed. That the investigative unit may have prevented a few lawyers from of filing petitions, however, is not as important as the fact that the vast majority of reports regard the actions of lawyers as appropriate.

While the investigative reports may have recommended that a conservatorship be approved, they often took issue with a particular problem which was uncovered during the investigation. For example, 12% of the investigators' reports made reference to inappropriate living conditions, inadequate care; some note that the conservatee's board and care home was overcharging or not

providing the personal services required. When asked if these reports created conflicts with the attorneys of record, most investigators with whom I spoke reported that their findings did not cause problems, and that in most instances, the lawyers were pleased to be apprised of their clients' situation. Thus, another potential for dispute is not realized in formal Probate Court proceedings.

Although formal objections are rarely filed with the Court, out of the 263 drama cases which I observed, 48, or 17%, contained some form of informal conflict. Informal conflicts are those disputes and arguments which occurred during the hearing, such as an outburst by a concerned relative, but which were not presented to the Court as a formal written motion. This type of objection occurs considerably more often than do formal objections as found in the archival records. Many of the objections brought before the Court were not filed as objections, but were, rather, informally expressed by the complaining party in the court hearing. Consequently, the little conflict that does exist in the Probate system is expressed in informal ways. Thus, grievances either are most frequently either reported to the court investigator at the time of the investigation or are discussed during

the hearing when dissenting parties are given a platform from which to object.

Most of the professionals with whom I spoke stated that the most common kind of conflict associated with Probate are disputes not over the creation itself of the protective hold, but between relatives over which one of them is to be conservator. The following are comments made by professionals concerning the tensions between family members:

> If there are problems generally they are adult children warring between each other and using Mom and Pop as the foil.
>
> Once in a while, we find relatives fighting, and then it really has to go to court, you know a brother against the sister who's trying to get whatever poor little mother or father has left.
>
> Unfortunately it boils down to brothers and sisters who don't trust each other and don't get along.
>
> When someone is going to be kept at home or put in a nursing home, and that kind of decision has to be made, or who's gonna care for so-and-so's bills and income, that's when sister Sally says I'm best qualified and sister Sue says I'm best qualified, and you get the natural kind of disputes, kind of a classic.

Summary

The Probate Court serves primarily persons with means, white, elderly females, who reside in institutions,

most frequently in convalescent hospitals. Conservatorships last for many years and, in most instances, the person for whom a conservatorship is approved will die while under the protection of the Court. One of the main functions of this law is to protect and conserve the estates of those persons whose weakness of mind or body makes self-determination difficult, if not totally impossible. In most instances a family member or friend is directly involved in the proceedings, generally as petitioner, but also as the person to whom letters of conservatorship are issued.

Most of the elderly persons for whom conservatorships are sought do not attend the court hearing because of physical incapacity. Whenever a person fails to attend the hearing, a medical certificate must be filed with the court, and in this way the medical profession has a direct impact on judicial hearings. However, medical doctors rarely give testimony in the courtroom.

Many of the cases before the court involve voluntary conservatorships, and frequently, the proposed conservatee has requested that a particular person be appointed conservator. The Probate system is, in fact, relatively free of formal conflicts and disputes. In most cases, the system operates on a non-adversarial legal model; that is, the proposed conservatee is unrepresented

by legal counsel. The conflicts that do arise involve members of the proposed conservatee's family, and the disputes most frequently center on who should be appointed to serve as conservator. Occasionally conflict erupts during Probate proceedings, but these are generally brought forth through informal channels and are not presented to the court as formal objections or petitions. The vast majority of conservatorship petitions are approved without incident, and demands for jury trials in Probate Court are almost unknown.

However, abuses of the system do occur, usually when a conservator takes advantage of his position to use the conservatee's monies for personal gain. Yet, such abuses are not rampant, and the court takes the necessary precautions to ensure that any individual placed under the authority of another is bonded against financial harm. Other abuses of Probate law are associated with conservatees who are being held involuntarily in mental health facilities. Such detention is clearly against the law. In most of these cases, however, the individual in question was placed in a state hospital or locked facility many years ago, before legal revisions made such action illegal. Today, as court investigators become aware of these cases, the conservators and their lawyers are notified of the illegality of such placements and are

simply told to remove the person, or to seek a Commitment conservatorship. In other words, the investigative unit has gone a long way towards reducing the incidence of abuse in the Probate system.

Probate Court has seen a 45% decline in the number of petitions filed over the past decade. The reason for this drastic reduction is complex. The strengthening of legal safeguards by means of legislative changes has, in effect, eliminated borderline cases from the system and has even kept some attorneys from seeking conservatorships because many lawyers hold the opinion that the new laws, compared with those they replaced, are too strict. Another reason for this decline is the passage of a community mental health law (the LPS Act), which removed from the auspices of the Probate Court many of those persons having a diagnosable mental illness and a need for involuntary psychiatric treatment. The final reason for which the Probate system has seen a reduction in the number of petitions filed, and consequently, a reduction in the number of elderly persons placed on protective hold is that persons with limited means, or those isolated persons for whom no one is acting as advocate, are excluded from participation in the Probate system. This system is not equipped to serve those for whom no responsible person is willing to serve as conservator, or at

least to bring the matter to the attention of someone who is able to function in that capacity. Thus, the Probate system is most often limited to serving those persons with both money and family: access to protection for destitute or isolated persons who require assistance is effectively blocked.

ETHNOGRAPHY: COMMITMENT COURT

Historical Perspectives: Biennial Review

Under the Lanterman-Petris-Short (LPS) Act of California, a person may be incarcerated in a mental facility and treated against his will for fixed periods of time ranging from 72-hours to one year. Code section 5150 (Cal. W & I) permits any person to be taken to a mental health facility for evaluation and treatment for up to 72-hours, without a legal review. In 1979, those mental health hospitals of San Francisco charged with providing acute 72-hour evaluation and treatment involuntarily detained 3,430 people (Quarterly Reports on Involuntary Detentions: Department of Mental Health 1979).

The second fixed period under which a person can be held involuntarily is designated in code section 5250 (Cal. W & I) which allows 14-days of intensive treatment. If, at the end of 72-hours the person has not sufficiently recovered for release and refuses to accept treatment voluntarily, the facility may so certify and detain him or her for an additional 14-days. According to records published by the California Department of Mental Health, health facilities in the City and County of San Francisco certified 1,170 people for involuntary 14-day detention in

1979. This number represents a marked increase from 1978 in which 771 certificates were recorded, and from 1977 in which only 505 certificates were filed with the Commitment Court. Thus, from 1977 to 1979 we see that there was a 57% increase in the number of 14-day certifications taken out by hospitals in San Francisco. Once again the law requires no hearing in these cases, but during the 14-day certification the detainee must be informed of his right to obtain judicial review by writ of habeas corpus. The sole purpose of the writ is to establish whether or not the hospital has detained the person legally--that is, that he is either a danger to himself or to others or gravely disabled, and refuses to accept treatment on a voluntary basis.

TABLE VI

Judicial Action 1977 to 1979: Writs of Habeas Corpus Filed on 14-Day Certifications in Commitment Court*

Year	Certs. Filed	Writs Habeas Corpus	Approved		Denied		Withdrawn	
			Numb.	Percent	Numb.	Percent	Numb.	Percent
1977	505	105	7	7	48	46	50	48
1978	771	145	14	10	72	50	59	41
1979	1170	216	27	12	90	42	99	46
Total	2446	466	48	10	210	45	208	45

*Note: Rounding Error

Table VI contains a summary of the total number of 14-day certifications as well as the number of writs of habeas corpus filed from 1977 to 1979 on behalf of involuntarily detained patients. On the average, writs requesting immediate release are filed in only 19% of all 14-day certifications which are requested. Further, as Table VI clearly shows, only 10% of writs filed are approved and had to release patients, while in 45% of all cases the writ is denied and the involuntary detainment continues. Interestingly enough, 45% of all writs filed with the Commitment Court are never ruled on because they are withdrawn by the filing party prior to the court hearing. Frequently writs are withdrawn prior to a judicial action because psychiatrists are unwilling to come to court and fight to keep a patient. Thus, if the patient protests his incarceration and treatment, chances are excellent that the doctor or facility will simply let the person leave. In other words, it is not unusual for doctors to release argumentative patients.

Occasionally, writs are filed not to obtain freedom from a mental health facility, but rather to gain leverage in the bargaining which occurs between patients and doctors, or between patients and facilities. For example, the patient may not wish to take a certain medication, or may wish to be transferred to a particular facility, or to

receive a certain treatment modality. In these instances, the lawyer for the detainee may fight, not for release, but for compromise between his client and the treating facility. Still, the most intriguing aspect of writs and requests for release is not so much their diverse applications, but that 81% of the people placed on involuntry 14-day holds between 1977 and 1979 did not protest their incarceration or treatment.

The third time frame employed under the Commitment system is designated in code section 5300 (Cal. W & I) and is only applicable to persons who, while being held on a 14-day certification, inflicted physical harm on or threatened another person and therefore presents an imminent danger to others. Since imminent threat of substantial physical harm to others is difficult to predict, most psychiatrists choose not to seek post-certifications; rather, they seek temporary and one year conservatorships which require merely grave disability as the result of a mental disorder. This type of detainee may be held and treated for an additional 90-days on a post-certification for imminently dangerous persons. In 1979 only ten cases were presented to the court for post-certification (Quarterly Reports on Involuntary Detentions: Department of Mental Health 1979). During

this period the person has the right to legal representation and may demand a jury trial.

Therefore, the normal sequence for those who are involuntarily detained begins with 72-hours of incarceration for evaluation and treatment. If further treatment is needed, a 14-day certification for intensive treatment is obtained. Finally, if additional treatment is still necessary, a petition seeking a one-year conservatorship may be filed with the Court according to code section 5350 (Cal. W & I).

TABLE VII

Biennial Review 1969 to 1979: Number of Petitions for Commitment Conservatorships on Adults and Minors and Summary of Judicial Actions*

Year	Total	Approved		Denied		Unadjudicated	
		Number	Percent	Number	Percent	Number	Percent
1969+	61	20	33	39	64	2	3
1971	436	273	63	162	37	1	0
1973	284	181	64	103	36	0	0
1975	427	212	50	215	50	0	0
1977	496	211	43	285	57	0	0
1979	652	231	35	415	64	6	1
Total	2356	1128	48	1219	52	9	.4

*Note: Rounding Error.
+Note: The LPS Act became law on July 1, 1969, thus data compiled for 1969 only tabulates statistical materials for the final six months of the year.

A statistical review of conservatorship petitions filed between 1969 and 1979 shows that the total number of petitions before the Commitment Court changed radically from year to year. In Table VII we can see that the lowest number of petitions seeking one-year conservatorships filed in any full calendar year was 284 in 1973, while the greatest number was 652 in 1979. Moreover, between 1973 and 1979, there was a steady increase in the total number of conservatorship petitions filed with the Court. Similarly, between 1971, the first full year of the biennial review, and 1979 the number of conservatorship petitions filed in the Commitment system increased by 50%. Surprisingly, however, while the number of petitions filed increased dramatically, the actual number of conservatorships approved per year remained relatively constant. In fact, between 1971 and 1979 there was a 15% decline in the number of petitions approved by the Court. Although there has been a 22% increase in the number of conservatorships approved between 1973 and 1979, an increase of 50 actual cases over a seven year span, the number of petitons filed during this same period increased by 56%, or 368 petitions.

Table VII reports on the judicial actions which pertain to Commitment conservatorships. It demonstrates that 48% of all conservatorships are approved, 52% are

denied, and fewer than 1% are never ruled on. That the majority of one-year conservatorships are denied by the Court results from factors other than that patients within the mental health system protest their involuntary incarceration and treatment and, consequently, win their freedom in a court of law. One of the built in safeguards of the Commitment system is the legal requirement that an independent investigation be undertaken to determine if a one-year conservatorship is indeed warranted. The investigator is required by law to establish that grave disability exists, a condition which the law defines as the inability on the part of an individual, as the result of a mental disorder, to provide food, clothing, and shelter for himself (Cal. W & I Code Section 5008). After reviewing the psychiatric and medical records, the investigator must make a formal recommendation to the Court. In San Francisco, if, in the opinion of the investigator, the patient under review is capable of providing food, clothing and shelter, the petition for conservatorship is automatically denied.

Another crucial area in the determination of grave disability under the LPS Act is the patient's ability to accept help voluntarily. If, in the opinion of the investigator, the proposed conservatee is capable of seeking assistance, the investigator will recommend that

the conservatorship be denied by the Court. A great many conservatorship petitions are subject to denial because, in the investigator's view, clinicians tend to focus on the patient's diagnosis or behavioral manifestations, rather than on the legal definition of grave disability. Further, many clinicians prefer to place a patient on involuntary status as a matter of convenience, because it gives them greater control during treatment, even though the law specifically forbids involuntary detention in such cases.

The LPS Act is replete with legal provisions requiring that mental health facilities act in accordance with judicial mandates while treating patients. For example, it provides that if the treating clinician decides that the patient would benefit from additional treatment and applies for a 14-day certification, the patient must immediately be notified of his right to obtain a court hearing for release by writ of habeas corpus. Failure to serve notice is a violation of the law and the patient will almost certainly be released if he chooses to pursue his legal rights. Further, to all persons involuntarily detained, the LPS Act guarantees the right to refuse convulsive therapy and psychosurgery, to retain personal possessions, and to see visitors and communicate with people outside the facility. It is not

uncommon for a patient to be released on the grounds that a facility failed to serve legal notice. Enforcement of the law is therefore viewed, on occasion, as an obstacle to patient treatment and care.

Strict adherence to the many rules and regulations which inundate the Commitment system is only partially responsible for the high percentage of conservatorships which are denied each year. For additional explanations we must look beyond the boundaries of the Court. Specifically, we must understand how the myriad of laws are integrated into the social and cultural realities of the communities in which they operate. For example, the judicial interpretation of legal statutes is often considerably different than the actual application of the law as administered by psychiatrists and community mental health workers. In short, both professionals and patients actively maneuver the legal statutes so that they can be made to work to their advantage and assist them in meeting their goals.

Clinicians have learned, for instance, how to subvert the intent of the law by turning the fixed time periods as written into the LPS Act to their advantage. For example, in 1979 the average length of time between the initial request for the establishment of a one-year conservatorship and the judicial hearing to determine

whether or not a conservatorship should be established was thirty-three days. During this period a temporary conservatorship is automatically granted, and the Court investigation begins. Now, if a clinician believes that his or her patient needs additional treatment, but is convinced that a one-year hold is unnecessary, he may request a conservatorship, even though his patient does not meet the proper legal criteria for such intervention. Yet, by requesting the conservatorship, he is able to detain and treat the patient for an additional thirty-three days without violating the law. Then, prior to the hearing, the clinician simply notifies the Court that the patient has "miraculously" been cured and is no longer gravely disabled; the conservatorship is automatically denied.

It is not unfair to suggest that the Commitment system is fraught with cunning individuals, both patients and professionals, actively seeking to circumvent the law, or to redefine it so that it works to their advantage. Consequently, we have one Commitment system as implemented by the police, another as used by clinicians and community health workers, and still another as used and interpreted by jurists. But conflicting perspectives over what Commitment is, or should be, are only partially

responsible for the large number of conservatorships which are eventually denied by the Court.

Other cultural realities which have a direct impact on judicial rulings include the reluctance of medical personnel to pursue involuntary holds on obstinate patients, the high cost of community mental health care and the lack of long-term mental health facilities in San Francisco, the overcrowded conditions of acute care hospitals in the city, and the preconceptions of many professionals about proper care and treatment for the incapacitated elderly. Finally, we must not ignore the human factor, that uncontrollable variable which

TABLE VIII

Biennial Review 1969 to 1979: Number of Jury Demands Filed in Commitment Conservatorship Proceedings and Summary of Judical Actions*

Year	Jury Demands	Found Gravely Disabled		Found Not Gravely Disabled		Withdrew Jury Demand	
		Number	Percent	Number	Percent	Number	Percent
1969	5	0	00	1	20	4	80
1971	2	0	00	1	50	1	50
1973	2	2	100	0	00	0	00
1975	7	0	00	2	29	5	71
1977	5	3	60	1	20	1	20
1979	0	0	00	0	00	0	00
Total	21	5	24	5	24	11	52

*Note: Rounding Error

frequently gets well when it should remain ill, or changes its mind and accepts what was previously unacceptable.

What is surprising is that legal confrontation does not contribute more significantly to the denial of conservatorships, especially since the Commitment system is set up on an adversary legal model within which two antagonistic parties are given ample opportunity to plead their cases before a court of law. Under the LPS Act any person for whom a one-year conservatorship is sought is entitled to a judicial hearing, and may at that time request a jury trial. But as Table VIII illustrates, out of the 2,356 cases studied in the biennial review, only 21 jury demands were made: less than 1% of all patients for whom conservatorships were requested elect to take advantage of the protections guaranteed them under the law. Moreover, just as with writs of habeas corpus, on 14-day certifications in which 45% were withdrawn prior to the judicial hearing, 52% of all jury demands were withdrawn prior to the trial. The statistical review further shows that if a case does go to trial the detainee stands a fifty-fifty chance of being set free.

The final statistical compilation taken from the Commitment biennial review reports the number of men and women for whom conservatorships are sought. In Table IX

TABLE IX

Biennial Review 1969 to 1979: Number of Males and Females Involved in Commitment Conservatorships*

Year	Males		Females	
	Number	Percentage	Number	Percentage
1969	31	51	30	49
1971	218	50	218	50
1973	162	57	122	43
1975	293	69	134	31
1977	324	65	172	35
1979	389	60	263	40
Total	1417	60	939	40

*Note: Rounding Error

we see that men are overrepresented in Commitment conservatorship petitions. In fact, for a decade, men remained as numerous or more numerous than women in conservatorship proceedings. The high ratio of men to women indicates the cultural climate of the community mental health system as a whole. To explain, with the passage of the LPS Act of 1969 came an amendment to the existing Short-Doyle Act which substantially changed the funding patterns for the care and treatment of mental patients. The Short-Doyle Act was intended to deinstitutionalize the mental health system by causing it to evolve from a hospital-centered to a community-centered format (Estroff 1981). In theory,

state mental hospitals would have been phased out, and replaced by local community based mental health programs. In fact, the state hospital system in California has not been eliminated, and although the community mental health system is now well established, it has never provided the range of mental health services anticipated. The community mental health system, then, is forced to exclude many individuals who display truly aberrant or dangerous behavior because they simply do not have the proper facilities. Moreover, today's tight purse strings and taxpayer revolts have further exacerbated the problem, so that the community mental health system selectively chooses those mental patients with whom it feels it can succeed, and passes those who constitute "management" problems on to the court.

The biennial review of statistical materials taken from the Commitment Court provides a historical framework for viewing the LPS Act from its inception. In theory, the fixed time periods written into the original LPS Act were meant to operate as a series of sieves, whose mesh would become finer and finer to filter out, so to speak, all but the most gravely disabled from eligibility for involuntary one-year conservatorships. To illustrate, in 1979 there were 3,430 people in San Francisco on involuntary 72-hour holds. Of these 1,170 were certified

for 14-day holds, and of these, only 652 came before the Commitment Court with requests for one-year conservatorships. Obviously the funnel effect has worked as originally conceived by the California State Legislature.

What is surprising, in view of the funnel effect, is that there has been a substantial increase in the number of individuals who have become enmeshed in Commitment protective service proceedings over the past decade. Although in 1979 the Court denied 64% of all requests to establish one-year conservatorships, under the present system, a person for whom a conservatorship is requested may be detained and treated for up to 33 days before being released by the Court (33 days is the average time span from initial incarceration to ruling on one-year conservatorships). Hence, right or wrong, it is evident that the community mental health system is taking full advantage of the flexibility of the law to deprive the mentally disordered of their freedom for periods of time which exceed the normal time frames written into the original law. The lengthening of involuntary detention periods gives the medical community the opportunity to treat patients for extended periods of time, and with the elderly in particular, the additional time is most frequently used to assist discharge planners in finding appropriate placements for the mentally or physically

infirm. Consequently, if the patient is to be placed in an unlocked or non-psychiatric facility which provides a protective environment (such as a nursing home or board and care home) the request for conservatorship is simply withdrawn.

The Daily Court: Commitment in Context

The Commitment archival materials, as presented in the biennial review, provide a historical overview of a legal system which primarily involves males, and is relatively free of legal conflict and disputes. But the review also reveals some intriguing disparities between the growing number of petitions filed and the actual number of conservatorships established. Let us now examine in greater detail the day-to-day operations of the court and more fully explore both the social characteristics of those who become enmeshed in Commitment protective services and the reasons for the sharp rise in court use.

Unlike the Probate Court and the other Superior Courts of San Francisco, the Commitment Court, formerly held in a wing of San Francisco General Hospital, is now housed in Juvenile Hall. Here you will find not marble columns or oak walls such as are found in City Hall, but a

small room of unimpressive decor. The furnishings are simple and the public seating area marred with graffiti. Still, the basic structure and design of the court are similar to those of other courtrooms. For example, the official State and Federal flags are prominently displayed, and the judge's platform and bench are elevated above all other objects in the room. Wooden pew-like benches are available in the back of the court for public seating, and the jury box is enclosed by a wooden fence. Thus, physically, the court resembles those of the other Superior Courts in the City, but the formal splendor of City Hall is not to be found in this building. Instead, the Commitment Court reflects functional informality.

Like his Probate counterpart, the Commitment judge wears a black robe and is surrounded by a professional entourage of court reporters, clerks, and bailiffs. The legal profession is most frequently represented by lawyers from the Public Defender's Office and from the Office of the District Attorney. The medical profession is represented by psychiatrists who work in the acute care facilities of San Francisco. Once each month doctors from the state hospital testify in court. The attendance of medical doctors and private attorneys in Commitment Court is extremely rare. Further, although family members and

concerned neighbors are permitted access to Commitment proceedings their attendance is unusual.

The proposed conservatee is not allowed in the court until his case has been called by the clerk, at which time he is escorted in from a small holding cell--a locked room furnished with immovable wooden benches and a bathroom which contains a small basin and a toilet whose seat has been removed--by the bailiff. In general, the attire of the proposed conservatee in Commitment Court differs considerably from that of his Probate counterpart. Here, one sees anything from suits and ties to hospital robes and slippers.

Whether it is the functionalistic building, the shock of viewing informally clad persons in a court of law, the occasionally eccentric behavior of the proposed conservatees, or a combination of all three, the undeniable fact is that the Commitment Court projects an atmosphere of informality not found in other Courts. It is in this colorful environment that judicial decisions regarding the approval or denial of Commitment protective holds are ultimately made. This section of the study incorporates information obtained by: (a) observing Commitment hearings over an eight month period; (b) interviewing 44 professionals in the field; (c) touring community facilities and programs, and finally; (d)

compiling statistics from a random sample of 300 Commitment cases drawn from the biennial review.

Legal

The Commitment Court performs a number of functions in addition to its primary role of appointing conservators for those found to be gravely disabled as a result of a mental disorder. Among these functions are the adjudication of writs of habeas corpus on 14-day certifications, as well as of all contested matters pertaining to the establishment of one-year conservatorships. This Court also holds hearings to appoint psychiatrists to review cases, rules on issues of medical consent, and reviews placement reports. Seventy-seven percent of all matters before the Court were requests to establish new one-year conservatorships, or if conservatees required continuing care, to reappoint the conservator for a succeeding one-year period.

During the eight months which I spent in the Commitment Court as observer, 1,202 matters were placed on the judicial calendar. Of these, 1,055 (88%) were "paper cases", cases in which no observable drama was evident. Paper cases in the Commitment system are most frequently those requests for conservatorships which are not contested, hence are "submitted on the report." This

report consists of any number of documents, depending on what issue is before the court. For example, in a conservatorship hearing a typical court docket will contain the following: Notice of Certification as filed by a doctor or facility which alleges that the person named therein requires further psychiatric treatment; an Investigative Conservatorship Report which contains vital demographic materials concerning the proposed conservatee's age, address, relatives, financial status, clinical summary and recommendations by the court investigator; Petition for Appointment of Temporary Conservator and Order Appointing Temporary Conservator of the Person; Petition for Appointment of Conservator and an information page entitled Justification and Recommendation for Conservatorship which provides additional information concerning the proposed conservatee's medical diagnosis and the attending physicians prognosis and recommendation. "Forty tons of it a month" is one informant's description of the paper flow found in the Commitment system which determines the outcome of most conservatorship cases. Since most paper cases are no more than clerical formalities, and since neither the proposed conservatee or attending psychiatrist is present at the hearing, these cases can be dispensed with as quickly as the Court clerk can read the motion.

"Drama cases", by contrast, made up only 12% of all observed cases. A typical drama case is conflict oriented and occurs because someone demands release and files either a writ of habeas corpus asking for a judicial review of a 14-day certification or, as with conservatorships, a hearing is held to determine if the one-year conservatorship should be established. At that hearing, the proposed conservatee may speak to the court and may even request a jury trial.

During my eight months in Commitment Court, I gathered information on 147 drama cases. The length of drama cases ranged from one minute to six hours and forty-seven minutes. Those cases which reached completion in five minutes or less (21% of all drama cases) were generally cases in which, although the proposed conservatee appeared in court with the intention of opposing the proceedings, on the day of the hearing either he decided not fight the establishment of the conservatorship, or the psychiatrist in charge of the case decided not to testify. Eight percent of all drama cases exceeded one hour in length. These were the cases that most commonly involved extensive conflict, or issues which could not easily be resolved by the court. On the average, however, a Commitment drama case takes twentyeight minutes to

conclude and most frequently involves testimony both by a psychiatrist and by the proposed conservatee.

In drama cases adversary relationships exist between the district attorney, who represents the people of California and is seeking to hold the proposed conservatee for further treatment, and the public defender, or in rare cases, a private attorney, whose primary responsibility is to protect the rights and wishes of his client. Most frequently, his task is to seek the client's release from a mental facility. What occurs during a typical drama case is that the district attorney solicits expert psychiatric testimony concerning the proposed conservatee's mental disorder and ability to function in the larger society. Once this informed opinion is on the record, the district attorney then attempts to broaden the legal definition of "grave disability" to fit the individual who is before the court. The public defender, in contrast, cross-examines the doctor in an attempt to demonstrate that even though the person before the court may indeed be mentally ill, he does not necessarily meet the legal definition of grave disability and should therefore be released.

It is important to remember that the issue in Commitment conservatorships is not whether or not the

person is mentally ill, but whether or not he is gravely disabled. As one informant phrased it,

> We walk into court with the assumption that the person is crazy, because we look at them sitting there drooling, and talking funny, and looking weird. The thing we have to break is this assumption that just because a person doesn't talk the same way or looks sort of weird, or looks threatening, then in fact they are incapable of providing food, clothing, and shelter. And again it's that fine line, you look at that man and you say, absolutely, he's crazy as a loon. He looks threatening, he looks crazy, he's talking to himself, whatever it is, but that's not the test in court. Mental illness is not what we're testing.

Since no jury is present during these hearings the person who must be convinced that the proposed conservatee is indeed gravely disabled and is therefore unable to provide for his basic food, clothing and shelter, is the judge. The following drama cases demonstrate a few of the common themes which run through the Commitment system.

Case No. 1--This hearing lasted sixty-nine minutes and began with a neatly dressed 25 year old Janapese woman being escorted into the courtroom by the bailiff. She had filed a writ of habeas corpus and was represented by a staff lawyer from the Public Defender's office. The first person sworn in was a male psychiatrist who, under direct examination by the district attorney testified that the woman voluntarily came to the hospital. He said that while she was playing loud music in her house, the Lord visited her and told her to go to the hospital. After the initial interview the hospital staff decided to file involuntary papers on her. He further testified that the woman was delusional and was constantly hearing voices, and giggling at "inappropriate" times. Moreover, the doctor said that his patient believed that she was from the planet Venus and that she was, therefore, immortal.

The medical label given to the patient was manic-depressive with schizoid schizophrenia. As part of her treatment she was receiving ten milligrams of the medication Haldol and ten milligrams of Lithium. When asked by the district attorney if she could survive in the larger community, the doctor replied that she could not, that she would probably waste her SSI check, and that it would not be used to purchase the necessities of life.

The public defender questioned the doctor in an attempt to show that the combinations of medications given in the hospital could be responsible for many of her behavioral problems. He then turned his questioning to his client who denied that she was from Venus, and said that she objected to the medications because the Lithium made her "throw-up," and the Haldol make "red devils run through my mind." The public defender then asked what the woman would do if the court were to release her, and he asked numerous questions about where she would go and what would she eat. She answered that she would go to her boy friend's house and would eat eggs for breakfast and sandwiches for lunch. The final point made by the public defender was that the woman had obeyed all of the hospital rules and would be willing to submit to voluntary treatment.

The district attorney then re-examined the psychiatrist in an attempt to show that the medications, although capable of side effects, were not responsible for the woman's behavioral problems. After finishing with the doctor he asked the woman some questions about far away planets and UFO's [unidentified flying objects]. Under this questioning she did say that a UFO had come to her door and that she had "burned the UFO on the stove."

The judge then asked the woman a few questions about her religious experience with the Lord and about the behavioral problems which the psychatrist had mentioned. She told him that she liked to play her stereo very loudly and sing the song "Amazing Grace." When asked by the judge if Jesus liked music she responded with "I know Jesus likes music; maybe he listens to ABBA [rock group], I don't know." After all the testimony had been given both lawyers submitted the case to the judge who denied the writ for release and ordered the woman to return to the hospital for treatment. As she stood to leave the courtroom she screamed "I'll go to Russia, to Russia with love, God-damn you." This was followed by more cursing and screaming which could be heard until the woman was actually placed in the van which was to take her back to the hospital. The judge ordered a recess and stepped down from the bench.

Case No. 2--The proposed conservatee was a 63 year old white male dressed in a blue coat and grey slacks. He entered the court and sat next to his attorney, the public defender, and remained silent throughout the hearing. His conservatorship was being reviewed. He was presently institutionalized in a locked facility outside San Francisco. The first person to testify was a white, middle-aged doctor who, responded to the district attorney's questions about the person's grave disability and then suggested that the present placement was working against the man and that a board and care home would be a better environment for this person. He further informed the court that most of the other patients in the facility were psychotic and that the facility was inappropriate for this individual. The psychiatrist explained that the gentleman had chronic brain syndrome, and had had past problems with alcohol. The man had difficulty with cognition and extreme impairment with recent memory loss. Moreover, the man needed a structured environment because he had to be reminded to change his clothes and bathe. Thus, the psychiatrists felt that if left on his own he would become frustrated and aggressive.

The public defender then called the conservator to the stand to ask why the conservatee had not been moved into an appropriate facility. The conservator, an employee at the Department of Mental Health, argued that the man had not shown sufficient progress to make a less restrictive environment appropriate. The public defender argued that the issues before the court were, first, was the man gravely disabled, second, was the placement appropriate, and third, did the conservator violate the conservatee's constitutional rights by failing to serve his best interest. The public defender further cited evidence from employees at the locked facility who said that the reason for which the elderly man had not been transferred was that the conservator was of the opinion that, since he was old, there was nothing more which could be done for him. The judge listened to the public defender's arguments and to the conservator's replies before he called the district attorney and the public defender to the bench for a private discussion. When they had finished he announced that the conservatorship was being approved; however, he further ordered the conservator to find the man placement in a board and care home--immediately.

Case No 3--This case lasted thrity-nine minutes and involved a middle-aged black male who filed a writ of habeas corpus on a 14-day certification. The man was represented by private counsel, a white, middle-aged

male. Prior to the hearing the proposed conservatee apparently was involved in an altercation with another patient. When he was brought before the court his hands were handcuffed behind his back. He was informally attired in blue jeans and jacket. Because of the fight, the first witness before the court was the deputy sheriff who testified that the two men had gotten into an argument and that the proposed conservatee had knocked the other man into the wall. The district attorney questioned the witness about the fight and the witness explained that the proposed conservatee had struck the other man without provocation.

The second witness to be sworn in was a white middle-aged doctor from one of the acute care facilities in San Francisco. He testified that the proposed conservatee believed that threats were being made on his life, and that as a result of this fear, had purchased a pistol with which to protect himself. However, while riding on a bus, he found himself involved in an argument with two persons whom he felt were threatening him, and he started screaming at these two men. The police were summoned and, after searching the man, they found his gun and took him to the local mental hospital for observation. The doctor further testified that the man was despondent and suicidal and had recently tried to overdose on medications. Further, it seems that the proposed conservatee was deeply upset about the care which he had received in a local hospital and had filed a law suit over this issue. The district attorney stressed the potential for danger to the proposed conservatee and to others as a result of his mental disorder, which the doctor labeled paranoid psychosis. The man was being treated with the medication Haldol. The doctor further testified that the man was paranoid, but he stressed that this disorder was not disabling.

The private attorney argued that the man seemed paranoid because of the stress over the legal action against the hospital, and now that the suit had been filed, the problems would cease. Moreover, he argued that the man had not been threatening anyone with the pistol, but had merely been carrying it in his back-pack. Finally, he argued that the violence in the holding cell had been a cultural event between two black men who had been playing the "dozens," and should not be construed to indicate a violent personality. The proposed conservatee did testify, but spoke only about the legal conflict with the hospital, stating that it was now behind him. In his own defense he said that he had been provoked: "I just hauled off and knocked the heck out of him." The judge listened to all of the testimony and then refused to grant

the writ for release. The patient then asked the judge if he would please stop the hospital from administering medications and intercede on his behalf to have natural herbs provided so that he could treat his own illness. The judge said that he could not grant this request under the circumstances.

Case No. 4--This drama case was brought before the Court on three different occasions, and the combination of the three court appearances lasted approximately one hour. The issue before the court was one of finding a placement for a person with a history of setting fires. This young white male had been in the state hospital for years, and had originally been institutionalized under the medical diagosis of schizophrenia. The white, middle-aged psychiatrists who testified during the first hearing said that the man needed to be transfered into a less restrictive environment in the community. Both the distict attorney and the public defender agreed with the doctor's opinion and, therefore, the judge simply continued the case until the conservator, a State employee with the Department of Mental Health, could find a placement in the community.

At the next hearing the conservator reported that he could not place the man in a board and care home because these facilities were privately operated and that none in the community was willing to take a fire setter into their dwellings. The public defender argued that, if no alternative could be found, the man should be set free. However, the judge responded that "there is some necessity for placement. He needs some help, let us see what can be done." The judge then directed the conservator to try once again to place the person in a community facility, and postponed the hearing until the following week.

The next week the conservator again returned and anounced to the court that "private facilities, they don't want him." The district attorney argued that "the sad reality is that this is a society of limited resources" and not everyone could be placed according to his specific needs. Nevertheless, the public defender once again argued that since a less restrictive environment could not be found, in accordance with the LPS Act mandate, that his client must be released. The judge heard all of the evidence, and after reviewing the testimony given by the conservator, terminated the conservatorship, releasing the man into the larger community to seek his own domicile.

Case No. 5--An elderly, white male entered the court neatly dressed in slacks, sweater, and a tie. There was no psychiatrist present and the public defender explained that his client was not opposing the conservatorship, but simply wished to be moved to a mental facility which was closer to his wife's residence. It seems that the proposed conservatee had been married fifty-one years and would like to be closer to his wife and family. The judge listened to the public defender and then granted the conservatorship. He appointed the son, who was present during the proceedings but who did not testify, as co-conservator along with a professional from the Department of Mental Health. The judge then informed the conservator from the State that he wanted a placement report on the elderly gentleman, because he wanted to see the man moved closer to his family.

The cases presented above illustrate many of the central themes which are common in Commitment proceedings. For example, the need for appropriate placement and less restrictive environments, as well as problems posed by inadequate community facilities which are problems continually before the Court. Medication issues--whether or not a person should be forced to take psychotropic medications, and the nature of the medicine's side effects--are often central themes in conservatorship hearings. Arguments about what constitutes "grave disability" in our urban environment, and at what level a person should be considered incapable of providing for his or her basic food, clothing and shelter also are common areas for dispute. Violence, or the threat of violence, is another recurring issue before the Commitment Court and, although it cannot be used as a criterion for

granting a conservatorship, it is frequently brought before the Court and is often merged with the issue of grave disability.

In fact, however, involuntary treatment of the mentally infirm only becomes a matter of "law" in those cases in which the proposed conservatee opposes the wishes of the medical system. In the vast majority of Commitment cases there is no direct conflict between the patient and the medical system. If the proposed conservatee does not object to the establishment of a conservatorship, the matter before the court is nothing more than a clerical formality which simply approves the medical program already in effect. Arguments over individual freedom and mock battles between doctors and lawyers do occur, but less frequently than one might expect given the dire ramifications of an Commitment conservatorship.

In those rare instances in which the proposed conservatee wishes legal counsel, the public defender is the usual choice. Statistics taken from the observation of 147 drama cases indicate that in 138 of these, or 94% of the total, conservatees were represented by lawyers from the Public Defender's office. There are two main reasons for which private attorneys are not more commonly engaged in the Commitment system. The first is that mental health court involves a specialized field of law of

which few lawyers outside of those employed as public defenders have a solid grasp. The second reason, as will be more fully explained in the section on economics, is that most of the people who find themselves enmeshed in Commitment proceedings are poor, and therefore lack the economic resources necessary to contract with a private attorney. (This fact also explains why few private attorneys have attempted to master the content of the mental health statutes.)

In essence, the Commitment Court is a closed system because the same professionals from the District Attorney's office and from the Public Defender's office are continually in attendance. Moreover, most mental health facilities have designated certain psychiatrists to testify in those cases in which expert testimony is required. Consequently, the same professionals from both the legal and medical professions are routinely before the Commitment judge. This intimate group atmosphere, combined with the fact that in most instances the court is involved in writ proceedings as opposed to trials, gives an overall appearance of informality not found in other Superior Courts. Consequently, although the Commitment system functions on an adversary legal model in which the disciplines of law and medicine are forced to take opposing sides, the professionals within the system have

achieved a friendly rapport with one another. Since the judicial hearings are not open to the general public, and since few "outsiders" attend court, the Commitment system has become an isolated world of professionals who have been given the legal and medical responsibility of caring for, protecting, treating and disposing of the mentally infirm.

Conservatee

A Commitment conservatee is any person who, because of a mental disorder or impairment by chronic alcoholism, is found to be "gravely disabled", that is, to be unable to provide for his "basic" personal needs for food, clothing or shelter (Cal. W & I Code Section 5008). These criteria were formulated to prevent the inappropriate or wrongful incarceration of persons in mental hospitals without due process of law. One informant explained:

> I know what the act was created for, because mental facilities and institutions were being used to literally incarcerate people that shouldn't be incarcerated. I mean that is the purpose behind it, to recognize that people do have certain fundamental rights, and just because the person has an abnormal life style, that you and I may disagree with...if he wants to go out and act like an ass, and he's not hurting anybody, and he's not hurting himself, let him act like an ass.

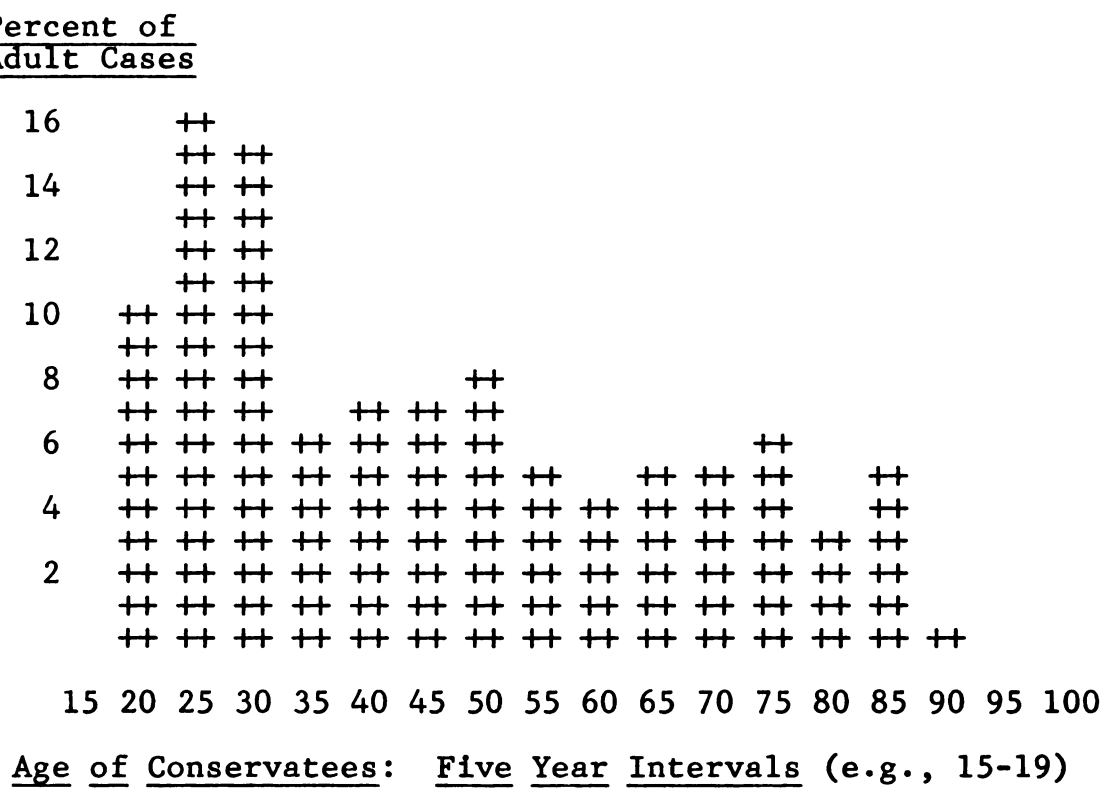
Examination of the persons who become enmeshed in jural proceedings under Commitment, and who, as a direct

result of these hearings, are given the legal status of "conservatee," will show the varied application of protective services under the LPS Act.

According to the statistics derived from the 300 cases in the subsample, the mean age for all Commitment

FIGURE II

Subsample: Age of Conservatees in Commitment Court (N=296)



conservatees is 45 years. Furthermore, 31% of all conservatees are under 30 years of age, and 73% are between the ages of 18 and 59 years of age. It is clear, then, that

most persons served by the Commitment system are relatively young. Nevertheless, the age range as reported in the subsample shows an age span from 18 years of age to 92 years of age. Twenty-seven percent of all persons under one-year conservatorships are 60 years of age or older. Figure II is provided to indicate more specifically the age distributions as found in the Commitment Court. Although persons in every age category are represented in the system, it is still the young who make up the majority of the sample.

The sex ratio of the Commitment subsample shows that 59% of the conservatees are males, and only 41% are females. However, examination of the ratio of males and females in the system over the past decade reveals that the Commitment system has evolved from one which served equal numbers of males and females to one heavily populated with males. The reason for which males have become the primary users of the Commitment system appears to be linked to the inability of the community mental health system to serve those defined by the mental health system as "management problems." According to my informants females present fewer "management" problems (such as physical outbursts) than do males in community mental health programs. Thus, persons displaying violent behavior, for example, are more likely to be transferred

from voluntary community facilities to involuntary locked facilities which can physically isolate them from the larger community.

A central aim of the mental health law passed in 1969 was to end the long-term "warehousing" of patients. In theory Commitment conservatorships are not established for life, but rather are designed to terminate automatically at the end of one year. There are, however, two factors which have had a direct impact on this philosphic model. The first is that medical doctors may petition the court to renew the protective hold over those individuals who remain gravely disabled. The subsample data reveals that 21% of all Commitment Conservatorships are renewed, and that a few have been continually renewed since the inception of the LPS Act. Moreover, 45% of the cases which have been renewed have been continued for three years or more. Consequently, the old practice of "warehousing" is not dead, but rather has emerged in a new form, under a new rubric. The main difference between the new form and the old is that fewer people are subject to this kind of treatment, and that such treatment is now more rigorously controlled by law. Still, it is possible to detain someone in a mental hospital for the remainder of his life under the present law.

The LPS Act's intention to end "warehousing" has also been obstructed by the tendency, known as the "revolving door syndrome," for certain individuals enter the mental health system again and again (see Estroff 1981). An analysis of the subsample data shows that 61% of conservatees have a history of psychological problems and involuntary hospitalizations. Twenty percent of the sample showed no evidence of prior hospitalizations, and the court investigator was unable in 19% of the cases to determine whether or not the person had previously been hospitalized. According to the investigative reports, it was often difficult to reconstruct the medical history of someone who had recently come to reside in San Francisco, or else was so disoriented that collection of a good case history was impossible.

Of those with prior hospitalizations, 28% have a history of institutionalization between one and five years. Twenty-two percent have had sporadic contact with the mental health system over periods ranging from six to ten years, and 18% have been in contact with the system for periods ranging from eleven to twenty years. Moreover, 15% of those cases reporting prior involvement stated that the initial contact began more than twenty years ago. In 15% of the cases, the court investigator noted prior involvement with the mental health system, but

was unable to furnish adequate case histories. Most conservatees in short, are familiar with the mental health system, and have been enmeshed in the process on more than one occasion. Recidivism is, in fact, a new problem facing the mental health system, and professionals are divided about overall effect that this pattern will ultimately have on patients. The following comments suggest the views of professionals working in the field concerning cyclical confinement as a manifestation of the inadequacies of the mental health system.

> What we know as mental health professionals is, give that person a week, two weeks, a month, whatever it is, and they're gonna be back in the system. In fact, what we have is a series of cyclic gravely disabled individuals, and so, thank God for that, I mean my sense is it's better they walk around in circles and have half the time outside and half the time inside [the mental hospital] until we truly understand the process enough to treat it, than to lock them up in a hospital.

> Now all these involuntary people are management problems, and no one wants them. The sheriff doesn't want them, jails are just chucked full of them, mental health places don't want them because they waste bed space, because they are usually chronic complaints that occur over and over again. So they don't want them because they are involuntary patients, they really aren't treating them. What they are doing is supporting them with drugs, letting the crisis pass and then shipping the out until they get in trouble again.

> [I]t's a horrible system,...it's basically a result of the way the law is written, and written by the Supreme Court. There's apparently a very strong liberty interest in getting crazies, however, incapable of dealing with the world, getting those people back on the streets...Nobody cares about what the constant in and out, unsupervised, supervised, milieu does to the crazies themselves. I don't know that the system works better than it used to when we warehoused them, but maybe it does. Between warehousing them without any treatment and putting them on the streets without any treatment, probably a toss up.

> I think there are a whole lot that come back through the system. But at least by my feelings that's two conflicting things, one of which is okay [because] that's the nature of the system, you've got some people that really do have some problems. They may well end up coming back through...The other way is much more negative, and in some ways a much more real way of looking at it. In a way it shows some problems with the system. If in fact it was an effective system, which I don't think anybody pretends that it is, they probably shouldn't be coming back 'cause they're supposedly getting help such that they don't end up back in. Sometimes I think it's the nature of the mental disorder that it's gonna be repetitive, it's gonna go in cycles, and they're gonna end up in the hospital every so often. But in part I think it does show the ineffectiveness of the system, that they end up coming back so many times.

Examination of the 147 drama cases reveals that the majority of conservatees or proposed conservatees who attend court are young white males. Specifically, 59% of all conservatees who attended court are white, 26% are black, and the remaining 15% fall into a general category

of "other non-white." Although court dockets do not always record the ethnicity of conservatees, state mental hospitals do keep statistics on the ethnic breakdown of patients. In 1979 the State of California admitted 20,248 persons to state hospitals, of whom 55% were white, 26% were black, and 18% were placed in other categories such as "non-white" or "unknown" (Department of Mental Health: MI Admissions, Book 12, Race by County DSH45 1979). These figures on ethnicity taken from the mental hospitals support those derived from the observation of drama cases.

The 1980 census reports the number of blacks in the city to be 13% of the total population. However, statistics drawn from both drama cases and from the mental hospitals places the percentage of blacks in the Commitment system at 26%. While the percentage of whites in the Commitment system is roughly proportionate with the population in the city, other ethnic groups which fall under the general heading of non-white are underrepresented in the Court's proceedings.

Another interesting characteristic of conservatees in the Commitment system is that they are more likely to be poor and on some form of government assistance. Specifically, the subsample data revealed that for all of those for whom fiscal information was available, (N=183), 73% received at least one kind of government assistance.

Moreover, of those receiving government checks 78% said that this was their only source of income. Only 22% of those receiving government assistance were found to have other sources of income or property, such as a savings account, pension, trust fund, or real estate. These statistics are perhaps not surprising when viewed from the perspective of one informant who argued:

> You asked me about the socio-economic aspect of it. Well, anyone who deals with the severe forms of mental illness always deals with the lower socio-economic strata. The explanation for that has been posed in several different ways, but the best one is probably what's been called the downward drift of the severely mentally disordered. Except for those people who have a lot of family money behind them, they occupy the marginal levels of social functioning, because that's all they can do. There's the kid in the middle class family who starts to have schizophrenic symptoms in his teens, is never gonna get out of the minimum wage job, isn't gonna finish school, he's gonna end up a marginal person at best. Then when he decompensates [returns to previous mental condition], what little he has is gonna quickly erode, and he becomes the Medi-Cal patient, SSI [Supplemental Security Income], living in a downtown hotel.

Further, persons of means can seek private treatment and may not have to rely on the community mental health system for psychiatric care.

A composite portrait of a Commitment conservatee would be of a white male, forty-five years of age or younger with a history of involvement in the mental health

system, probably including hospitalization in a mental institution. He would be indigent except for governmental assistance.

Conservator

According to the LPS Act a conservator of the person, of the estate, or of the person and the estate may be appointed for any person legally pronounced gravely disabled. In San Francisco, however, the policy of the Commitment Court has been only to appoint conservators of the person. If a conservator of the estate is needed the Commitment Court refers the matter to the Probate Court.

A conservator appointed pursuant to the LPS Act has the right, if specified in the Court order, to place the conservatee in a medical, psychiatric, nursing, or other state licensed facility. He is also empowered to cause the conservatee to undergo outpatient treatment, and if circumstances dictate, to request that a peace officer detain the conservatee and return him to the treatment facility. The subsample data shows that in 91% of cases placement was undertaken, not by a member of the family, but rather, by a state employee working for the Department of Mental Health/Office of Continuing Care (OCC). Specifically, 83% of those conservatorships approved by the court (N=150) appointed someone from OCC as sole

conservator, while in 9% of the cases, someone from OCC was appointed together with a family member to serve as co-conservator.

In only 9% of all approved cases a relative or friend was appointed as sole conservator. In these instances, the subsample shows that mothers and brothers most frequently serve as conservators or co-conservators. But because familial conservators are so rare, a statistical breakdown of relationships would be meaningless. In only two cases out of all the approved cases reported in the subsample did a friend of the gravely disabled person serve as conservator.

Kith and Kin

Most conservatees lack a social or familial network willing to become involved in the legal-medical process of protective services. Notices, as prescribed by law, are mailed to relatives within the second degree for those persons for whom conservatorships are sought. Of the 300 cases in the subsample, 22% lacked relatives who could be contacted concerning the commencement of jural proceedings. In the remaining 78%, between one and ten relatives were advised that a petition for conservatorship had been filed with the Court. The majority of proposed conservatees, 34% of the total, had notices mailed to only

one relative, while in 26% of all dockets, notices were sent to two relatives, and in 17%, notices had been mailed to three or more. The mean number of relatives contacted per case was 1.5. In other words, the majority of persons in the Commitment system do have contact with at least one family member.

But of the 469 relatives contacted, only 7% became involved in the jural proceeding in which their relatives were engaged. Specifically, twelve family members became sole conservatees, while thirteen others became co-conservatees with someone from OCC. Finally, eight relatives filed petitions in Probate Court requesting that conservatorships of estates be established.

This lack of family involvement is further apparent in drama cases. The information on 147 drama cases revealed that in 71% of the hearings, no one was present to witness the proceedings, besides the regular lawyers and doctors who were required to attend. In fact, throughout my eight months in Court I observed only twenty-five cases, or 17% of all drama cases, at which a relative was in attendance. Friends of the proposed conservatee attended Court in only five, or 3% of drama cases, and professionals from the community (such as, social workers) made an appearance in only twelve, or 8% of the cases.

Although Commitment conservatees are shown to have families, their families take neither an interest in attending the hearings, nor an active role in the judicial proceedings per se. Moreover, friends and professionals seldom attend or actively participate in Commitment proceedings. When questioned about the reasons for this general absence of kith and kin from these proceedings, most professionals explained that the mental disorder had taken its toll on the family and that after years of repeated episodes, the relatives had finally given up and turned the problem over to the State.

The idea of "family burnout" was a recurring theme continually presented before the court. For example, in one case a husband was sitting in the visitors section listening to the doctor testify about his wife's pathology. After much testimony the judge made the ruling that the woman was no longer gravely disabled and was therefore free to go. At this point the husband turned to his mother-in-law, who was also present throughout the hearing and said: "Oh Jesus Christ, that means she's coming home!" and he began to cry. In another case a woman in court asked what I was studying, and when I told her I was interested in what happened to those mentally frail persons who became involved in protective proceedings,

she informed me that my focus was incorrect and that I should be studying the "victims of the sick."

If there is one area in which professionals from all disciplines agree, it is that of the problems which the mentally frail cause their respective families. The following comments, made by psychiatrists, lawyers, social workers, judges and law enforcement personnel, all show this common concern:

> The people they drive crazy are their families, and their families can't deal with it, and nobody cares about their families.

> I have seen some cases, you know, great love for the family member who is afflicted. [The family's] lives are absolutely shredded when he rejoins the family group, and then decompensates...nobody says that, but you can read between the lines and know that they are going through pure hell. Just going through hell.

> One of the best vehicles for success in LPS [Commitment Court] is if you can get a family person or a support system to come into court, and this is true of Probate too, that can be one of the best aspects of your case. But it is very rare that we can do that. Most people have either alienated their support system or they do not have one to begin with.

> They [the family] get exhausted. The family doesn't have unlimited funds, the kid didn't finish school, he works on some assembly line somewhere, becomes antagonistic to the family, they get incorporated in his paranoid fantasies, he isolates himself, he has no friends, they help out with doctor

> bills and things for a while, but eventually he runs away from that. And then he shows up in a big city as somebody without a family. When you interview, or if you would interview some of these patients who come to court, you [would] find out they have relatives.
>
> I think there is a lot of family burnout where they finally give up because they can't tolerate it anymore.
>
> In cases where the family may be there, either they are burned out because this has been going on for so many years, or they just don't care.
>
> By the time that person comes in on a request for temporary conservatorship the family has had it, finished, through, done.
>
> I mean very often the reason they're ending up in LPS [Commitment Court] and ending up in a locked facility is often 'cause they don't have friends and family, or, their friends and family don't want to deal with them.
>
> I think that there's a whole lot of truth in saying that people end up in the mental hospitals because they're problems to other people. That they either don't have support systems or their support systems have given up on 'em or their support systems don't want to be bothered. I mean sometimes there's a whole lot to be said that the mental health system is used as a dumping ground [to] get rid of people that are problems.

According to most professionals, family burnout is the main reason for which individuals in the Commitment system do not have better contact with those who would

ordinarily make up their social networks. The other reason for which both the Commitment Court and the mental health system function without family involvement is that many professionals view the family as detrimental to treatment, as is evident in these comments made by professionals who openly discuss their tendency not to appoint family members as conservators and not to involve families in the healing process:

> The family gets into the act, and [are] motivated by this tremendous love that they have for this person. Nevertheless, it is really hampering the treatment, hampering the effective disposition of the person.

> One of the problems we get with certain families is that they'll object to almost everything that we're trying to do. They'll tell us how to treat the patient, and we always try to listen to what family experience with the patient has been, but if they get to interfering too much, if it's obviously poor advice that they are trying to foster, then we don't accept it, and this causes some problem at the gate.

> That raises another aspect of the problem, and that is that family members cause trouble for some of these professionals, and most particularly to the conservator social work types that wanna do something and wanna get it done today, and the family may not like it. And you know, usually it is easier to deal with a person who's sort of malleable, and that's the person you've got the power over, and it's harder to spend the time dealing with the families, and the system. Not only [does] the person alienate their family, but the system tends to operate to break up the family structure.

The absence of family involvement has crucial ramifications for those embroiled in the mental health system. Lack of contact may actually foster involvement in the initial Commitment process because there is no one to offer an alternative or prevent the legal-medical system from taking control. Thus, persons without families, or individuals whose families have given up trying to assist them are unwittingly placed in a vulnerable position within the mental health system. Unlike many other systems which require that an interested third party intervene to initiate action, the Commitment system works on the reverse model, and those without support systems are more likely to become enmeshed in the involuntary mental health system than those who still maintain a viable support network.

Economics

What the mentally infirm in the Commitment system frequently need, but seldom acquire, is a process by which their meager belongings are "protected," and their livelihood is secured. By law, the person who takes the mentally frail person into custody "shall take reasonable precautions to preserve and safeguard the personal property in the possession of or on the premises occupied by the person" (Cal. W & I Code Section 5156). One

informant explained that these precautions frequently are not taken and that a person who is placed in a mental facility for 72-hours of evaluation, or is placed on a temporary conservatorship can lose everything:

> The people who live in hotel rooms may be picked up on the street and hauled in, and everything that they own is ripped off. Nobody bothers, here is a guy who lives so and so, 'oh the hell with you, lets take you on in'. By the time they get back the little clock radio, or whatever little acquisitions they may have, even though 95% of these people are destitute, whatever little property they may have is gone...if your SSI is $300 a month and you're paying most of that out for rent alone, replacing your clothing or replacing your little radio, which may be your only tenuous grasp on sanity, is extremely important.

The problem may be intensified once the proposed conservatee is ready to be released from the mental facility, because the criterion for release is the ability to provide for oneself. If, however, he was evicted during his stay in the hospital, or if his SSI check was returned as undeliverable, it becomes difficult to provide for the basic necessities of life. Under these circumstances the involuntary nature of Commitment may actually create more problems than it solves, and may well place the mental patient in a Catch-22 situation; that is, he has been deprived of the very things which could help to prevent repeat hospitalizations. The problem is further exacerbated by the fact that in San Francisco County

Commitment conservators are not given the responsibility for overseeing the fiscal matters of conservatees. Consequently, in a great many cases the protection and monitoring of the conservatee's fiscal matters are neglected throughout the entire conservatorship process.

The mismanagement of money is another area which can have dire consequences for the mentally impaired. Not all persons who suffer from a mental disability have difficulty managing money. However, for those who need assistance in this area, there are few private or community resources available, and the criteria for inclusion in these various programs are often difficult to meet. For example, to get a money manager through Probate, one must have either an advocate who is willing to serve as conservator, or sufficient funds to cause the Public Guardian to function in this capacity. Consequently, the Probate conservatorship is not a realistic option for Commitment conservatees since the majority of people in the system have neither economic resources nor viable support systems. Moreover, the general lack of economic resources keeps these people from obtaining private services as offered by banks and other financial institutions. Both the Department of Social Services and the Social Security Administration have authority to institute substitute payee programs for persons receiving

monies issued by them. The purpose of these substitute payee programs is to aid those who are unable to manage their own affairs. In this way, such a person's bills, rent and other expenses would be paid without delay and without error. But, unfortunately the scope of these programs is limited; they do not assist everyone in need of fiscal management, but are authorized to assist only those who fall within the purview of their administration.

The lack of managerial programs to help those who need assistance in dealing with daily finances is a serious problem. In fact, the inability properly to manage ones resources may create a situation which leads to institutionalization. For example, one informant told of a mentally frail elderly women who simply stopped paying her rent and ended up in an acute care facility.

> She stopped paying her rent five months ago at the time she thought Billy Graham started to pay her rent for her. She's been in the hospital probably thirty-five days now, and it's only been a week now that she's really gotten it clear that Billy Graham is not gonna pay her rent, and now she hopes Billy Graham goes to hell. We made an atheist out of her I fear, but we've worked with the conservatorship investigator [name deleted], and with him I have pretty much arranged that she'll be able to go home.

Another professional also asserts the need for a mechanism within the community to assist the mentally frail with their financial problems:

> I can name you on any given calendar, half of the cases where if, maybe not a full half of the cases, but a good percentage of the cases where if there was a handle on the money as an alternative to conservatorship, we would not need an LPS [Commitment] conservatorship...some magic system to take over the money management and say this person has shown themselves to be unable to handle their money...You know, if somehow we have money management on those folk, we wouldn't need LPS conservatorships, whether it was the Public Guardian's Office or not, just some agency defined as looking at people with that as a criterion.

Often, it is less an individual's mental disorder that results in his hospitalization, than his inability to meet the social necessity of bill payment. The mentally disordered are particularly vulnerable to the kinds of problems which can arise over the use, or misuse of money. Many of these people are hanging onto their independence by a thread, and when a fiscal crisis arises they do not have the ability to recover or perhaps even to comprehend the gravity of the situation. For these people, the issue which ultimately brings them to the attention of the mental health system is not a diagnosable mental illness, or bizarre public behavior. Instead it is a careless moment in which they misplaced or lost the Social Security check which had just arrived in the mail or the inability to recall if they paid the rent this month.

Conflicts and Disputes

Clearly the intent of the LPS Act was to transfer the decision making authority concerning involuntary treatment from the medical profession to the legal profession, and thus using the tools of the judicial system to protect the rights of the mentally infirm .

In reviewing the safeguards that are in place, the biennial study demonstrates that most persons enmeshed in Commitment proceedings do not formally object to the care and treatment given by the medical system. In fact, less than 1% of all patients demanded jury trials on one-year conservatorships, and writs of habeas corpus on 14-day holds were before the court in only 19% of the cases (see Tables VI and VIII). During my eight months in the Commitment Court I observed four cases in which jury trials were requested; however, only one of these ever went to trial. Furthermore, 45% of all writs of habeas corpus, as shown in the biennial review, are withdrawn prior to a judicial ruling.

The withdrawl of jury demands and writs is usually more the result of a "judicial cure" than of a "medical cure." That is, the district attorney may simply not proceed against a protesting patient without the cooperation of the attending psychiatrists, and doctors are frequently unwilling to invest the time and energy

required to incarcerate and treat an uncooperative patient. For example, as one informant said:

> A judicial cure goes as follows; doc files a petition for conservatorship. Maybe goes to one of the preliminary hearings, right? Spends two hours testifying on the case. Public defender, if they lose the hearing, have five days to file for a jury demand. Okay, they file their jury demand. Now, the doc is gonna be faced with two, three, or four days in court...So this doc's got forty folk on his ward, got one raspy prospective conservatee who's saying I'm gonna fight you every inch of the way. You know, you won the last one, but you're not gonna win the next one...and there's this miraculous cure! You know, the day of the hearing, Mr. Smith will get a call from the hospital that says, last night we released Mr. Jones because we decided he was no longer gravely disabled.

Still others are released because many psychiatrists believe that even if they win the legal battle to keep their patients confined, they suffer defeat on the therapeutic front. One informant summarized the dilemma as follows:

> [Psychiatrists] think that technically they might have the legal grounds, but they may feel that if they hold them, if they keep them in by winning in court, it will devastate their therapeutic relationship so much that it's not gonna do any good to keep the person.

Consequently, it is often the threat of court which results in patients being released and treated as voluntary patients rather than being retained involuntarily.

The imminent threat of judicial conflict and the hidden ramifications of a Commitment hearing are potent forces which actually reduce the total number of conflicts and disputes occurring in the Commitment system. Thus, in fact, the presence of a system specifically designed to deal with disputes does not encourage or increase conflict, but rather, has just the opposite effect.

Another arena of conflict found in the Commitment system is located where law and medicine encounter each other. In many ways conflict between the two groups is a philosophical one over what constitutes proper medical intervention into the life of a mental patient, and who should ultimately have the authority in determining that such intervention is warranted. The mental health law states specifically that the final decision concerning who may or may not be held and treated involuntarily is to be made by jurists, and not by members of the medical profession. Consequently, the role of the psychiatrist has been restricted by law to diagnosis and treatment of the mental patient who is being held involuntarily, but only insofar as such treatment is allowed by the Court. This situation leads to frustration for psychiatrists who feel that they do not have the full power to treat the sick. As one informant explained it:

> I think doctors finally just say well what's the point, we don't have any control anyway, ya know, let 'em [judges] do what they want to. They just kinda throw up their hands in disgust about it because they don't have the ultimate power.

Another psychiatrist outlined his impressions of the Commitment Court and expressed a common feeling among doctors that the medical diagnosis is no longer the ruling criterion in the Commitment system:

> In effect that you have a non-medical person, ultimately in the form of a judge, and non-medical people [lawyers] arguing what frequently becomes very much a medical question. And I find that their decisions are not always based upon the medical acuity but perhaps on other socio-economic factors. As for instance, the wealthy woman who had a bona fide medical illness and a bona fide psychiatric illness, and was in a very weakened state both physically and mentally, and yet she was released by the court. So you wonder...that certainly was not based very much on her medical condition, it was based perhaps more upon other socio-economic factors.

Yet these frustrations seldom result in direct confrontations between doctors and jurists, for both have accepted the realities of the mental health law. What does occur, however, is that doctors often complain that they are placed in an awkward position because they are responsible for treating the most difficult people, that is, the involuntary patients whose mental condition makes

it impossible for them voluntarily to accept services from the community mental health system. Furthermore, since most involuntary conservatorships are processed through the public hospitals, which have contracted with the city to serve the mentally disabled, staff psychiatrists do not have the luxury, as private doctors have, of refusing service. Consequently, most staff psychiatrists see the involunatry patient as an unfair burden requiring them both to treat and to justify their medical actions to a court of law.

The kinds of frustrations experienced by psychiatrists who serve involuntary patients are suggested in the following quotation:

> [In] many cases the testimony takes the form of trying to show that the patient, his problems are caused by the hospitalization. Now I don't go out in the streets with a net, capturing these people and taking them into my hospital. They're sent to me because they're behaving aberrantly, and they come to the notice of their relatives, friends, or the police, which is what happened in this lady's case, and she's sent to me for treatment...I'm not persecuting her, and I deeply resent when the public defender interprets protecting this lady's rights as requiring that my efforts to help her be cast in a negative light.

Or as another psychiatrist said when asked how he would feel if the involuntary system were to be abolished, and he did not have the power to incarcerate patients:

> I would say 'Great.' We will only treat the people who want to be treated. It would make our life much more pleasant. We wouldn't have to be involved in the legal hassles. And who's going to do what with the involuntaries will be someone else's concern. I see no reason why we should be forced to treat people who don't want treatment, and then have to justify what we're doing...'cause I don't like the system of having, being forced to treat people, and then also being forced to justify what we're doing.

Consequently, the conflict which occurs at the medical-legal interface is the direct result of two disciplines being given joint authority over the problem. The medical views on treating the sick, and the legal perspectives on protecting basic human rights sometimes oppose each other. In particular, there are two main areas in which the practice of medicine directly conflicts with that of law.

The first is the treatment of the mentally frail person who is brought into a mental facility for 72-hours of evaluation and treatment. By law such a person must receive treatment during this time; however, in practical terms, the staff of the hospital may not actively treat the mental disorder because, from their perspective, the patient requires an additional 14-days of treatment. They know that if they actively treat him and he files a writ of habeas corpus, the odds are increased that he will be released by the Court. Therefore, they want the person to

appear as deranged as possible during the hearing so that the judge will approve the additional treatment. Public defenders scream that the law has been violated and that the medical personnel are guilty of subverting the intent of the law. In contrast, medical professionals view their policies as pragmatic solutions to problems caused by legal intervention.

These two perspectives can best be illustrated by comments from three informants; the first a jurist, the second and third, psychiatrists:

> A good example of that happened in court yesterday, there was a doctor on the stand who testified that somebody came into the mental hospital and she was manic depressive, and so he prescribed Lithium. But he prescribed a very low dose for her, because he did not want her to get well, for he felt like she would look too good for her court hearing. So he wasn't treating her in a manner to get her well, until the court hearing was over and then he could obtain a long term commitment. And when he was asked about that he tried to explain on the stand why he did that, and he said because it is exactly the same as somebody who is getting a surgeon...You don't want to go in and do half an operation, you want to turn somebody's whole life around. So they are operating purely on the medical model.

> And it's almost at times where the psychiatrists are tempted not to treat the patient so that they'll look, really look crazy at the time of the conservatorship hearing, so... they'll have a chance to treat the patient.

> At times there has been a dilemma as to how much treatment to give a particular individual knowing that they would be coming up for a conservatorship hearing, and in essence wanting them to appear in their natural state. So you do face a dilemma of just how aggressively to treat someone, especially [someone] who is coming up for a conservatorship.

The second type of conflict between jurist and lawyers arises over the filing of conservatorship papers in order to confine an individual for an extended period of time, but with the full knowledge that the petition will be dropped prior to the court hearing. As one informant described the technique used by psychiatrists:

> The only big problem I have with [temporary petitions], and this is my subjective opinion, but informed...is that it's not uncommon for the temporary conservatorship process to be used as a means of keeping the person for another thirty days. Now, I think that's a questionable practive because that's clearly not the intent of the law. In other words, a temporary conservatorship is filed when the staff of the facility really doesn't intend, or doubts that they will pursue conservatorship and they're just using it as a tool for another thirty days.

Once again it is not the LPS Act which creates the conflict between jurists and doctors, but its implementation. Lawyers argue that psychiatrists deprive citizens of their basic human rights by manipulating the Commitment system to fit the medical model; psychiatrists

counter with the charge that the system, as written, is unworkable.

Medical

All persons for whom involuntary conservatorships are sought must have a mental disorder which can be categorized using the third edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-III) of the American Psychiatric Association. This manual operates on the basis of a multiaxial evaluation system which evaluates each individual on five "axes": clinical syndromes, personality disorders, physical disorders, psychosocial stressors, and adaptive functioning.

In the Commitment Court the testimony given by psychiatrists is concerned both with the principal diagnosis, and with the behavioral manifestations of the disease. For example, the Court would want to know that a particular patient had been diagnosed as Schizophrenic, and that this disorder contributed to his disability. A Schizophrenic patient might experience bizarre delusions of being controlled by an indirect communication with alien beings. Although the specific nature of the auditory hallucination would not be irrelevant to Court proceedings, of chief significance to the Court is the way in which these hallucinations interfere with the patient's

ability to provide for his basic personal needs--food, clothing and shelter.

Analysis of data taken from 296 cases in the subsample reveals first the most common diagnoses used, second, their distribution according to age and sex, and third, the number of persons in the Commitment system with multiple symptoms. Seventy-one percent of all involuntary patients were diagnosed as having a Schizophrenic disorder. It is important to understand that although there are many types of Schizophrenic disorders, the most common kind found in the Commitment system is the Paranoid Type (DSM III 295.3x), which has the essential features of prominent persecutory or grandiose delusions, or persecutory hallucinations . Undifferentiated Type (DSM III 295.9x), the second most common category consists of disorders characterized by prominent, but not persecutory or grandiose, delusions, hallucinations, incoherence or grossly disorganized behavior. Sixty-one percent of all persons reviewed in the subsample exhibited one of these two types of Schizophrenia.

Twenty percent of those under involuntary conservatorships are classified as having Organic Mental disorder. Under this broad category DSM-III classifies both "organic brain syndromes" and "organic mental disorders". Each of these disorders is viewed as a

psychological or behavioral abnormality associated with transient or permanent brain dysfunction. Moreover, according to DSM-III, which is slightly different from its predecessor DSM-II, the etiological factor is associated with the aging process or is substance-induced. Thus, both the specific etiological factor and the specific organic brain syndrome come under the general heading of Organic Mental disorders. This general heading covers such illnesses as Senile and Presenile Dementia (DSM III 290.xx), Alcohol Psychosis, and Korsakov's Psychosis (DSM III 291.10). The remaining 9% of the sample had other types of classifications in the DSM-III, though none of these represented more than 3% of the total.

In Table X the principal diagnoses of conservatees have been broken down according to age and sex. This table demonstrates that sex is less important in determining mental diagnosis than is age. For example, Schizophrenic disorder is the most common diagnosis for both males and females aged eighteen to fifty-nine. However, for those 60 years of age or older the most common diagnosis for both males and females is Organic Mental Disorder. Other disorders occur with insignificant frequency for all conservatees regardless of age or sex.

TABLE X

Subsample: Principal Diagnosis by Sex and Age*
(N=292)

	Males		Females	
Diagnosis	Age of Conservatee		Age of Conservatee	
	18-59	60-99	18-59	60-99
Percentage of Schizophrenic Disorders	85	30	89	24
Percentage of Organic Mental Disorders	7	61	4	62
Percentage of Other Disorders	8	9	7	13
Total Percent	100	100	100	100

*Note: Rounding Error

Close examination of the medical records from the subsample further reveals pertinent information concerning the types of biological or physical complications which afflict many of the persons enmeshed in the Commitment system. Specifically, of the cases reviewed in the subsample, 26% (N=287) showed that conservatees suffer from at least one non-psychiatric medical problem. Only 14% of those conservatees under 60 years of age reported

physical problems. By contrast, the subsample reveals that, of those over 60 years of age, 56% reported having at least one physical disorder. Clearly, those in the upper age brackets experience a greater incidence of both physical and mental problems than do those in the lower.

Generally, the subsample data showed that mental patients suffer from the same kind of medical problems that afflict the general populace. Common diseases such as cancer, diabetes, and heart problems were among the most frequently reported. The elderly, however, reported problems which are similiar to those which might well be found among any infirm population. For example, many of the elderly mental patients under conservatorships were reported to be incontinent of bowel and bladder, suffering from hearing loss, or recovering from the trauma of a cardiovascular accident. In most instances, because of its structure, the involuntary mental health system is not capable of coping with the physical problems experienced by the mentally frail.

Summary

The mean age of a Commitment conservatee is 45 years, and 73% of all conservatees are under 60 years of age. Involuntary patients are typically males, while females are underrepresented in the involuntary system.

Although the typical patient is white, a substantial number of minority group members are enmeshed in protective proceedings, particularly black Americans who are overrepresented in the Commitment system. Also, most conservatees have had prior encounters with the mental health system. In fact, patient records show that most have had repeated contacts with both the voluntary and involuntary mental health systems, and that these patients are most frequently diagnosed as having some type of Schizophrenic disorder. Moreover, most are indigent and are receiving some kind of governmental assistance. Finally, although the statistics reveal that conservatees have families who are notified about Court hearings there is almost no involvement by either kith or kin in the Commitment Court. The Commitment system is, then, a young and middle-aged and poor person's Court which serves those who have no alternative resources with which to deal with their mental handicaps.

The Commitment Court operates in accordance with an adversarial legal system specifically designed to protect the civil liberties of the mentally frail. Still, the evidence shows that few mental health patients invoke the judicial protections afforded by law. For example, the biennial review shows that writs of habeas corpus were filed in only 19% of all 14-day holds, and jury demands

made in objection to one-year conservatorships are sought in fewer than 1% of Commitment cases. In the Court conflicts tend to arise, not between doctors and patients, but rather, between the medical and legal professionals working in the system. Still, these disputes are more philosophic in nature and rarely result in overt outbreaks of hostility or direct confrontation.

The total number of one-year conservatorships approved between 1973 and 1979 increased by 22%. More significant, however, was the 56% increase in the total number of petititons placed before the Court during this same period. Accordingly, in 1979, 64% of the petitions seeking one-year conservatorships were denied. These statistics help to illuminate an interesting trend in the implementation of mental health laws by the various communities. Specifically, the filing of petitions in San Francisco is being used, first to increase the established treatment periods as written into the LPS Act so that facilities may continue to give care, and second, to increase the length of confinement and hospitalization. In effect, the LPS Act is being carefully manipulated by professionals to meet the needs of those infirm persons who would, given a rigid interpretation of the statutes, be ineligible for inclusion in Commitment proceedings and treatment.

COMPARISON: PROBATE AND COMMITMENT

The following table is provided to facilitate a comparison between the Probate and Commitment Courts.

TABLE XI

Comparative Summary of Probate and Commitment: Observations, Interviews, and Archival Materials

Issue of Comparison	Probate Court	Commitment Court
Attire of conservatees	formal suits/ties	casual blue jeans
Mean age conservatee	75 years	45 years
Principal ethnicity of conservatees	white	white
Econonic status of conservatees	middle/upper: mean inventory $104,289	indigent/poor: 73% receive at least one form of governmental assistance
Living accomodations of conservatees	86% reside in nursing homes	mental hospitals
Sex of conservatee	40% males 60% females	59% males 41% females
Involvement of Public Guardian's Office	yes	no

Issue of Comparison	Probate Court	Commitment Court
Medical labels 18 to 59 years old:	"minors"	schizophrenia
Medical labels 60+ years of age:	"old age and disease"	organic brain disorders
Number of adult petitions filed in 1979	441	652
Percentage of petitions approved in 1979	83%	35%
Medical testimony common in hearings	no	yes
Legal model	non-adversarial	adversarial
Family or friends involved in Court proceedings	yes, 71% of all drama cases had at lease one relative in attendance	no, in only 17% of all drama cases did a relative attend
Who serves as conservator	family 48% professional 35% friends 16%	professional 91% family/friend 9%
Investigative unit available	yes	yes
Average length of drama hearing	8 minutes	28 minutes

Issue of Comparison	Probate Court	Commitment Court
Hearings open to public	yes	no
Principal actors in Court	private attorney bonds person Judge	Public Defender District Attorney Judge psychiatrists State Office Continuing Care
Key component/issues in most cases	money family/friends placement physical problems who appointed conservator	no money no family mental diagnosis treatment facility voluntary vs. involuntary treatment medications behavioral problems
Other agencies or services involved	Dept. Ment. Health Public Guardian banks geriatric serv.	Dept. Ment. Health Comm. Ment. Health state hospitals locked facilities local hospitals
Formal objections	motions in 3% of the cases filed between 1969-1979	writs of habeas corpus filed in 19% of the cases 1977-1979
Jury demands common	no, less than 1% of cases	no, less than 1% of cases

Issue of Comparison	Probate Court	Commitment Court
Psychiatrists testify at hearings	no	yes
Length of time from initial contact to ruling on conservatorship	32 days	33 days
Increase or decrease in the number of petitions filed	a 45% decrease 1969 to 1979	a 50% increase 1971 to 1979
Are physical ailments common	yes, 87% of all conservatees have at least one physical problem	no, only 26% of all patients report having physical problems
Major advantages of protective service system	money management less restrictive	agency to act as conservatee crisis intervention
Major disadvantages of protective service system	no access for poor no access for isolated Public Guardian's policies	distorted grave disability concept used to place elderly, but not to treat manipulation of system to fit medical model can not deal with "management problems" revolving door syndrome no method of dealing with finances

THE ELDERLY

When are protective services protective? The question is neither capricious nor inane. This section describes those elderly who become enmeshed in protective services, whether it be through Probate, Commitment, or a combination of the two. It also reviews the events which transpire once a frail elderly person is labeled "gravely disabled" or "incompetent," or is in some way adjudged unable to provide for himself.

Protective services, as provided to the aged, are frequently benign. Occasionally, they are harmful. But most of the time, they are neither benign or harmful, but are simply ineffective in meeting the needs of those frail elderly who require protection. Protective services for the aged have become a process by which lawyers, judges, doctors, and community mental health workers have become prisoners of their own procedures. As the legal statutes have grown more protective, the protective service options for the frail elderly have become fewer. But the occasional failures of protective services in dealing with the debilitated elderly are usually not due to professional incompetency, but rather, to the inflexibility of the protective service system itself.

Let us now examine in more specific terms first, the protective capability of our system of protective

services, and second, the system's capacity to do harm to those whom it intends to serve. Finally, we will consider the social and cultural factors which affect programs designed to serve those debilitated elderly whose problems and needs do not necessarily fit the protective service models employed in our society.

This section contains case studies whose function is to illustrate the important factors influencing the administration of protective services. The following cases have been taken from drama cases and from court records.

Commitment: Case No. 1--Mr. Jones was an 86 year old male Caucasian with a mental diagnosis of suicidal senile dementia. He presently resides in a state mental hospital. The investigative report filed at the time of his conservatorship hearing showed that Mr. Jones had never before been hospitalized for psychiatric treatment. Prior to his hospitalization, Mr. Jones lived in a private apartment in the City. The report describes his financial status as good and indicated that he receives a pension, Veteran benefits and has a savings account of $5,000. The report further indicated that Mr. Jones is widowed and that his family consists solely of one nephew who is not willing to serve as conservator on behalf of his uncle. According to the report, the nephew had tried to persuade his uncle to enter a nursing facility or convalescent hospital, but Mr. Jones had refused, since the cost of the care would absorb some of his private funds.

The investigator reported that Mr. Jones came to the attention of the local mental health unit when a neighbor, who had been assisting him, became concerned and reported his behavior. According to the mental health worker who conducted the initial interview, Mr. Jones alternated between "lucidity and delusions." Furthermore, the mental health worker reported that Mr. Jones became aggravated and "he shouted at me, rose from his bed, picked up his cane and swung twice." He was immediately

admitted to an acute care facility as gravely disabled and a danger to others. While in the hospital he "defecated all over self and bed...asking God to take him away." Since Mr. Jones was unwilling to give up any of his savings for the purpose of placement in a private nursing facility he was transferred to a state mental hospital. According to the investigator, Mr Jones is still unwilling to cooperate with the Public Guardian and continually refuses to pay for care outside of the state hospital; his refusal makes placement in a less restrictive environment impossible.

Probate: Case No. 2--Mrs. Smith was a black woman in her late sixties. As reported to the Court, a community social worker visited her at home and found her living conditions to be deplorable. According to the community worker, this woman was disoriented and confused at the time of the visit. Mrs. Smith refused to throw trash away; in fact, she had the habit of searching garbage bins for food scraps, which she would rescue and put into her refrigerator. The social worker said that during the first visit the house was found to be filled with garbage and infested with mice and rats.

The woman is widowed and lives alone; her family consists of two male cousins who reside in the San Francisco. The case worker, upon completion of the investigation, contacted both cousins and convinced them that their relative needed assistance. Accordingly, both cousins filed petitions to become Probate conservators of Mrs. Smith's person and estate. Her assets included a mortage-free home and approximately $22,000 in savings.

The petition for conservatorship was approved, and the first cousin to file was selected to serve as conservator. The plan as reported to the court is to provide Mrs. Smith with in-house services to prevent her from collecting trash and to keep the living environment healthy. Counseling will be provided by the community social worker.

Probate: Case No. 3--The proposed conservatee, Mr. Adams, is a white male 84 years of age. Although blind, he continues to live in his own home with the assistance of a part time homemaker. For years he has hired a friend to serve as his accountant and to help him pay his bills. His estate exceeds $100,000. The petition before the Probate Court was filed by this friend-accountant who asked the Court to approve a conservatorship of both person and estate. The lawyer for the petitioner argued

that a conservatorship was needed to protect this frail elderly man from artful and designing persons. The public defender, who was appointed by the court to represent the blind man, found the gentleman to be alert and functioning well with a homemaker. While the public defender's client did not object to the petition, he did wish to remain in his own home. Consequently, on the recommendation of both the court investigator and the public defender, the Court approved the petition with the stipulation that the person could not be moved from his home without first notifying the Public Defender's Office. Thus, the protective relationship was approved and the Court, responsive to the desires of the proposed conservatee, made a special provision which prevented him from being transferred to a nursing home without the prior approval of the Court.

Commitment: Case No. 4--The proposed conservatee was 62 years of age, a white female. Ms. Smith is presently being treated at an acute care facility in San Francisco. Her medical diagnosis was chronic schizophrenia, and the behavioral manifestations of the disease include impaired judgment, and memory loss. The treating psychiatrists testified that she was withdrawn and showed signs of being paranoid. According to the doctor's testimony the woman has a long history of psychiatric hospitalizations, extending back over forty years. Prior to her current hospitalization she had lived with her brother in the Tenderloin, a low rent distict of the City. When her brother died she was unable to manage by herself, and the final result was that Ms. Jones was placed in a mental hospital for observation. The court records show that she has no income and is not presently enrolled in any governmental assistance programs.

Ms. Smith has a son who has agreed to assist her, but unfortunately she has refused to cooperate with him and further has refused to give him power of attorney so that he can enroll her in governmental assistance programs. The doctor from the acute care hospital said that, since she would not trust her son, and since she has no money, the only alternative would be to place her in a state mental hospital under a Commitment conservatorship until such time as the state hospital could determine her eligibility for governmental assistance. He further testified that what she required was a board and care home, but that since she lacked money with which to pay for such care, and since she refused to sign the proper documents, the hospital and her son had no choice but to place her in a state institution chartered to care for the indigent.

Commitment: Case No. 5--Mrs. Johnson was a widowed, white, 76 year old female who lived in a shared apartment in the city until being evicted by the Sheriff's Department. The eviction notice was given to her because of a dispute with the landlord, which was precipitated by a personality clash between these two persons. After her eviction both Adult Protective Services and a local community service group failed in their attempts to place her because Mrs. Johnson refused to cooperate with suggestions for placement. The court records further show that she has no family in this country.

After her eviction, the woman began sleeping in the lobby of a large hospital and wandering throughout the City. Eventually, she was hospitalized in a acute care psychiatric facility, and once again several placement attempts were made. Again she refused to be transferred either to a nursing home or to a board and care home. The doctor's testimony characterized her as being fiercely "independent and wanting things her way." He further suggested that what Mrs. Johnson needed was adequate custodial care, and not intensive psychiatic treatment.

The public defender argued that her incarceration in a mental facility was inappropriate for Commitment, because the woman was not receiving any psychiatic treatment while in the hospital. He further argued that, while the woman was perhaps "gravely obnoxious", she was in no way "gravely disabled," and that if she belonged anywhere in the protective service system, she belonged in the Probate system and not the Commitment. However, since she had less than $6,000, the Public Guardian's Office refused to assist her. Still, everyone agreed that even if the Public Guardian had taken the case, the chances of successful placement were minimal given the temperament of Mrs. Johnson.

Over the next few months, she was repeatedly hospitalized, being frequently returned to the acute psychiatric hospital by the police who would find her sleeping in the hospital lobby or riding a bus. Because of her advanced age and frail condition, the hospital continued to admit her, and, as the doctor testified, "she [had] not required a locked facility since the day she came in." Eventually, a one-year conservatorship was granted, and the woman was incarcerated in a state mental hospital.

Most of those involved in this particular case agreed that Mrs. Johnson did not require psychiatric treatment, but rather, felt that she was just a very difficult woman to work with and that her refusal to cooperate was responsible for most of her problems. To the people in the acute psychiatric hospital, where she

spent almost six months, her presence represented a terrible waste of bed space and money. Although the public defender continually argued that she was not eligible for an Commitment conservatorship, her case was nevertheless continued on numerous occasions, and he never requested a jury trial for her release. Although the District Attorney's Office was reluctant to seek a conservatorship, it felt that it had no alternative short of releasing Mrs. Johnson to a life of sleeping in hospitals and riding buses. In short, no one wanted to place Mrs. Johnson in a mental hospital, but there were no alternatives available for this obstinate woman who refused placement, and who, when released, was unable to find accomadations which were acceptable to the community.

If this woman had been living in the slums of the City, or been found sleeping in Golden Gate Park the chances are slim that she would have been placed into a mental facility. However, since the woman became both a bother and concern to a middle class neighborhood the final disposition was radically different than that which would have been imposed on one of the cities "bag ladies." In short, the norms of the sub-community had been violated, and the standards of the citizens who live in that environment were enforced. Yet the realities of the situation were such that nothing short of incarceration could prevent Mrs. Johnson from sleeping in hospital lobbies.

From the case studies emerge recurring themes in the administration of protective services for the aged. The following section examines these themes, along with those social and cultural factors which have a direct impact on the administration of protective services for the aged.

The Gravely Obnoxious

Much of the voluntary care administered to the elderly in our country is accomplished through elaborate persuasion or coercion techniques. That is, families and

professionals urge the old person to accept treatment for his own good. For example, few people voluntarily request placement in a convalescent hospital. However, a great many elderly persons reluctantly accept such placement on the advice of kin who convince them of its necessity.

Involuntary protective services operate on a similar model in that most treatment programs and placement services are agreed to by the conservatee. In fact, the widest range of services are available only to those conservatees who can be coerced into accepting advice given by family, friends and professionals. An "unreasonable," "stubborn," "obnoxious," or "opinionated" elderly person may well exasperate the social and professional resources available. Indeed, the protective service system is ill-equipped to contend with the old man or woman whose temperament or mental disorders interfere with the treatment and services indicated in his case. For example, an elderly man may deteriorate to the point at which both family and professionals agree that placement in a convalescent hospital is necessary for his protection. However, when the issue is finally discussed with him he may refuse to consider such placement and, in addition, may have the tenacity needed to block it.

Several of the case studies demonstrate how an uncooperative person may be placed in a state mental

hospital, not because he will receive the best treatment there, but because the system is unable to provide alternatives given the restrictions placed on it by the proposed conservatee. Thus, the old men and women who refuse to cooperate with those who regard themselves as responsible for their well-being sometimes find themselves in placements or situations which do not fit their needs, but which are the only course of action legally available to those charged with providing protection. The following story, as told by one of my informants, is just such an instance:

> One woman...who was really a feisty, fiery little old lady, who I worked with so often and no one here could stand her at all. I mean she would spit on the nursing staff, kick, and scream...She'd go into court and I mean she just had so much pride she couldn't give in. We placed her in so many board and care homes in the Victorian Hotel, and several others. No hotel, no senior hotel would take her, and no board and care home would take her...We must have made at least six placements, and we really tried way more than we usually do. She fought a Probate conservatorship, successfully once...the second time she was placed on Probate conservatorship. She fought an LPS conservatorship successfully twice, and the third time I think she was placed on it...Anyway, she ended up going to Napa because there was no place else to send her. She went to Napa on a t-con [temporary conservatorship]. There's no place in this world for her, I don't think. I mean there really isn't a place for her.

Those elderly persons who steadfastly refuse to transfer out of a physical care hospital to a nursing facility, or to pay for homemaker services so that they may be properly maintained in an independent living situation, or to stay in a court ordered board and care home can often find themselves at the mercy of an inflexible system. In theory, protective services can be administered involuntarily. But, in fact, they function best when the proposed conservatee cooperates with the professionals charged with carrying out the orders of the Court. This is not to suggest that professionals are always correct in seeking protective holds. However, the reality of the situation is such that those who refuse to cooperate limit the resources available to protect them and may, in fact, jeopardize their chances of securing the kinds of protections which would prove most beneficial.

The Professional Dilemma

The best way for a person to beat the creation of a protective hold is to oppose it vehemently, to file writs of habeas corpus, to demand a jury trial--in short, to make himself objectionable to those who are trying to protect him. Unless he presents a real danger to himself or the community, the chances are very good that he will be released. First, family members will ordinarily

withdraw their petitions rather than risk damaging a relationship with a relative, and second, professionals in the mental health field know that those with mental impairments will be filtered back into the system at a later date and that the loss of time and energy in fighting with an uncooperative patient is not worthwhile. The aged are the exception to this conflict-release model: their special problems present families, friends and professionals with a series of legal, medical, and ethical dilemmas.

To explain, protective service statutes are not applied uniformly to all persons believed incapable of self-determination. In fact, the application of protective statutes in the case of a frail person in his 60s may be radically different from that to someone in his early 20s. The social and cultural expectations regarding proper intervention differs from one age group to another. Thus age and the cultural expectations about the aging process affect decisions concerning protective intervention. A mental health worker explained it this way:

> If someone's 30 years old and they're just being a brat and won't accept treatment we say 'Okay.' 'We've done what we can, and goodbye.' And we let them fall on their faces. But if someone's over 65, people don't say, 'Look, here are all the board and care [facilities], we'll do whatever we can

> to help you pick the best one for yourself, but if you don't like what there is, that's your choice, goodbye.' In some ways, I don't know what would happen with some of these people if they knew that they would end up falling on their faces.

Furthermore, psychiatrists are often hesitant to release the old man who sleeps in the Park and makes his living by taking odd jobs on the ready labor market because they are aware that the frail elderly are especially prone to infection and are often targets of assaults committed by the young. In the case of a 20 year old with a similar lifestyle, however, the decision to release or hold would present few if any problems. This same awareness of the social problems faced by the elderly makes the police somewhat reluctant to take a confused and disoriented elderly person, say, found wandering around the city, into a mental hospital or jail. Officers tend to avoid, if possible, subjecting an elderly person to the trauma of incarceration. According to law enforcement officials, however, if a younger member of society were found unable to provide details about his living arrangements or had failed to answer questions concerning his identity the police would immediately transport him to the nearest county hospital. Moreover, the public defender might argue vehemently for the release of a 30 year old man, even though he might have no place to go and no plans

to provide for himself in the future. In the case of a similarly disoriented person of 60 years of age, however, we might well find that the public defender would seek a continuance until an appropriate plan for his care could be submitted to the Court. Similarly, an individual in his 20's with a tendency for reckless spending would be regarded by the community as foolish. But such tendencies in someone over 60 years of age are likely to be labeled senile and to bring about prompt legal intervention by a concerned relative or by the State. Consequently, the image of aging is sometimes more influential in determining intervention, or lack thereof, than the elderly person's individual mental and biological capacities.

Sometimes in attempting to serve the frail elderly, professionals--doctors, lawyers, social workers--actually violate their own standards. That is, by accepting the premise that the elderly must be protected at all cost, these professionals deliberately manipulate existing statutes. For example, hospital personnel frequently change the criteria for admission just enough to retain the elderly patient until placement for him can be secured elsewhere. Jurists alter their normal procedures just enough to accomodate the special needs of the elderly, allowing, for instance, continuances to extend beyond the established periods, or allowing hospitals to take

liberties with an individual's civil rights such as might not be tolerated in the case of a younger person. Thus, the professional faces two options. He can treat the elderly as he would all other persons who become involved in the protective service system, knowing that many of the protections afforded under the present system will fail to meet the needs of the aged. Or he can manipulate the current protective mechanisms so that they satisfy the special needs of the elderly who become entangled in protective proceedings.

Kith and Kin

Before we begin to examine the application of legal sanctions, it would be well to review the informal protective mechanisms which are in continual operation throughout our culture and which, in some ways, parallel formal protective service mechanisms. Most of the elderly who meet the legal and medical criteria for protective intervention are not subject to jural safeguards. Rather, the services which may be needed to insure that a debilitated elderly person can maintain a safe and secure life are supplied informally by kith and kin, and generally, the protections initiated by friends and family can be carried out without mobilizing the full panoply of formal protective services. Thus, as my informants argued, a

viable social network serves to limit the number of aged person who become enmeshed in protective service proceedings.

When informal protective mechanisms are inadequate or unavailable to safeguard the elderly, the only recourse may be legal intervention. Yet when informal mechanisms are superseded by law, kith and kin still play an important role in protection of the elderly person. In fact, in many ways, the structure and involvement of the social network is the key component in determining the type and quality of services which will be provided under the guise of protective intervention. For example, in the Probate system, an involved person must petition for conservatorship. If no such person can be found to perform this function, and if the Public Guardian's Office is unable or unwilling to act as conservator, there is no way for the elderly person in question to be aided by the Probate system. Consequently, if he is in dire need of protective intervention, he could only find assistance in the mental health system, that is, in the form of an Commitment conservatorship.

Unfortunately, however, services offered in Commitment are considerably different from those offered in Probate, and indeed the protections afforded by the two Courts can be substantially different. An elderly person

requiring assistance with fiscal matters--the individual who would benefit most from being processed through the Probate system--can, in fact, end up in the mental health system, a system which, in San Francisco, has no charter for assisting with money management. The Commitment system, on the other hand, does have the structure necessary to protect those persons without family or friends willing to assist them, so to this system are referred all persons to whom access to the Probate system has been blocked. In effect, the type of protective services available, whether in Commitment or Probate, depends less on the specific problems of the needy individual than on the accessibility of entrance into the appropriate Court.

In this regard, the family plays a key role in providing the elderly person with access to the court which would most adequately meet his needs. A workable social network can both insure that the frail elderly are not denied the protections afforded by law, and protect them from becoming involved in a protective service system which is inappropriate to their needs.

Economics

The individual's financial standing is another factor determining his access to protective services. The indigent are routed into the Commitment system, which can

accomodate individuals who are without resources and who must, once placed under the protection of the Court, be supported with State monies. In order to place a Commitment conservatee in a private locked facility, or under the care of a private hospital, funds must be available, for such facilities are operated for profit. But state mental hospitals and most community mental health programs are funded, at least in part, by public monies, so that for those unable to pay for private services or those ineligible for government benefits, the only protective services available are those provided by the Commitment system.

Moreover, the kinds of services and programs which are available to state mental hospital patients may be altogether inappropriate for the aged. Thus, if a person needs a protective or custodial environment, but has no resources with which to pay for such care, he or she might be placed under a Commitment conservatorship and transferred into a state mental hospital because such a facility is the only resource available to those charged with providing protective care.

In contrast, most of the resources available under the Probate system require either financial resources or eligibility for governmental assistance. Many nursing homes, for example, will accept a limited number of

indigent patients so long as the tab is picked up by the government. Unlike the Commitment system, the Probate system has few resources with which to aid people who lack either money or property, or who refuse to use their funds to assist in their own placement and protection. While this study was underway, access, or ability of the Probate system to assist the indigent, was further limited by a policy implemented by the Public Guardian's Office denying service to anyone whose financial resources were not in excess of $6,000. Consequently, an elderly indigent person could gain access to the Probate system only if someone, most frequently a friend or relative, would be willing to take on the fiscal responsibility for him and to act as conservator. If such a responsible person could not be found, access to the Probate system was effectively blocked and such protection as could have been provided would have had to be secured by way of a Commitment conservatorship. This is another way in which entrance into the protective service systems can be influenced by factors other than the individual's needs and to which his needs are irrelevant.

Placement

One of the most complex problems encountered in protecting the vulnerable elderly is placement. There are

many kinds of environments which may be used to protect and serve the aged. For example, under the Commitment system, placement can be made in state mental hospitals, acute psychiatric care hospitals, locked facilities, board and care homes, and nursing homes. Unlike the provisions found in the LPS Act the Probate law specifically prohibits placing anyone in a locked facility; most conservatees are therefore placed in convalescent homes or board and care facilities.

The concept of protective services for the aged is almost synonymous with placement: a great many of the elderly who become involved in protective services, both Commitment and Probate, require some form of custodial care because of their physical frailty. For those persons who require extensive psychiatric care and treatment, the issue of placement is also, of course, of central concern. In addition, finding adequate protective accomodations for the elderly is extremely difficult because all placement resources are scarce, or as one informant said, "There's no place to put a demented old person." Similarly the types of facilities needed to meet the combination of psychological and biological problems which afflict the aged are almost non-existent. One informant said, "The options, in terms of what is right for the elderly individual, [pause] the options are so damm

limited that it is really heartrending. I'm not kidding you, it really distresses me."

Furthermore, for those whose mental and physical disability make protective placement necessary the quality of care provided is often poor. Typical comments on different type of facilities by informants included the following:

> [Locked facilities]...there aren't enough beds in locked facilities, and many of the locked facilities don't have adequate programs anyway. They're understaffed; there are many things wrong with them.
>
> [State Hospitals]...as long as they have these huge wards up there--and I don't know exactly how many, but where they have 40 people sleeping in one room--I think that that's a grossly dehumanizing environment for anybody to live in...[To] live in this environment, where the only privacy or dignity or physical integrity they have is their tiny cot in this huge room, where they're sleeping in the same room with people who wander at night, or scream, or hallucinate, or babble--and that would be intolerable to me. And I really get worked up about this, because I think, California, for God's sake, can do better than that.
>
> [Locked facilities]...Those L-facilities are terrible...The problem is that they're all lumped in together. You've got these young, really bizarre, assaultive schizophrenics, and when they want a cigarette or they want something, they go and take it away from the older people. Here's these elderly frail very responsive to stimuli, just like to have routine and orderliness, and they're put in this milieu that's just the opposite...I know that these old people [pause] maybe not fully beat up, but they're getting

> an elbow in the ribs, they're getting pushed against the wall every so often, they get things taken away from them, getting pushed in the back of the line when it comes to the food.
>
> [State Hospital]...Whereas you'll have, if the same person, just given the luck of the draw, or the fact that there was no draw, was sent to Napa, they'll be sitting on a ward with a bunch of really acutely psychotic young people, and you know, they'll get the programs available, but not things that are really relevant to their age.
>
> [Board and Care Homes]...They [mental patients] are being warehoused in Board and Care homes, and this includes the elderly. And the Board and Care operators are really kindly, well meant [sic] people, but they have limited training--it is a cottage industry.

The placement problem is further complicated by a number of social and cultural factors which have both direct and sometimes disastrous consequences. The scarcity of community facilities, for example, means that some geriatric placements must be made 50 to 100 miles outside of San Francisco. One informant explained that, given the lack of available placements, the concept of community care is, "really a joke...somebody else's community." Furthermore, the aged are viewed as "hot potatoes" which no one wants to handle, primarily because of the lack of fiscal resources, and viable support structures, as well as because of the physical afflictions of old age. Consequently, acute psychiatric facilities frequently

complain that they are forced to accept elderly persons whom they are unable to place. Thus, a prodigious amount of "dumping" occurs, with physical care wards dumping the elderly onto acute psychiatric wards, which, in turn, dump their elderly placement problems onto state hospitals. The end result is that a great many elderly people end up in facilies which are inappropriate to their specific problems, while others fail to receive the type of care which would prove most beneficial.

The failure of our society to provide the resources necessary to aid and care for the debilitated elderly person is similarly perceived by judges, lawyers, psychiatrists and community workers:

> The problem is the demented person, who doesn't have a place to go--let's say the evictee, who's lost his frame of reference and that's just enough to make him quite confused and quite gravely disabled. They're tough [to place] because it's hard to justify under Medical regulations, it's hard to justify acute hospitalization for them, and sometimes it ends up a psych hospitalization mainly for the purpose of placement.
>
> When the Medicare and MediCal eligibility runs out why then, they're shipped off here [to the state hospital].
>
> There are the senile dementias and presenile dementias, which are definitely psychiatric disorders, even though they're not functional or treatable...There's no treatment for [it]; it's just a matter of custodial care. But if you can't get them into a facility for one reason or another,

then they're stuck here [in an acute psychiatric hospital].

What happens is that this person with dementia is slowly holding on. And then they're evicted for some reason, and what happens is the sheriffs then call the police, and the police gather them up and bring them here [to the acute psychiatric hospital]. They've got their little shopping bag or their box with a cord around it, like all their worldly belongings, and there they are. Got a few clothes in their bag, and that's it. And it's really hard to find a placement for them.

I can not conceive how that man [a 75 year old who wanders and has a diagnoses of organic brain dysfunction] should get to Napa [state hospital]. I know how they get there, they go into Langley Porter and other [acute care] hospitals, where the staff are very nervous of the medical problems they may bring with them, are very frightened they're gonna be injured, and they're not sure how to treat them with chemotherapy, or they're concerned about the side effects on heart and other, you know, systems...it's like a hot potato, and I've watched them and they get them out, get them out, get them out, get them to Napa.

They're old, and they may be feeble, they may well need some assistance, but I think the problem is they're getting funneled over to mental health because nobody else wants to deal with them, and that, in fact, the problem is one of placement.

The State and Federal governments are paying 250 bucks a day for us [an acute care hospital] to babysit people who need to be bathed in the morning and have their clothes changed several times a day, [and who] need to be fed.

They're not suitable for Napa, they don't need that level of care but we have one admitted now...he's not on SSI [Supplemental

> Security Income], he's not on MediCal, and if it's going to be a long drawn out process of getting MediCal for him, we're [an acute care hospital] gonna have to eventually send him to Napa to wait until the MediCal is established before he can go to an L-facility...they won't take him unless there are funds.

In theory any placement made as the result of a protective relationship having been established should first consider the needs and problems of the conservatee. If the elderly conservatee has money and a viable support system the chances are excellent that the kind of care required can be found and purchased. In the Probate system, the placement requirements of the infirm can be fulfilled because, in most instances, the Probate conservatee has both family and money with which to work. Placement becomes difficult in the cases of indigent elderly people living without support systems. Generally this is the category of elderly who find themselves in Commitment proceedings. When these constraints cannot be resolved, placement in the least restrictive alternative or the most appropriate environment may well be blocked. In these cases access to treatment and care is limited to those who meet the criteria for admission. The sad reality is that there are not enough facilities capable of serving the debilitated elderly, especially those with a combination of mental and physical problems. Given the

present system and the restrictions which it imposes on access to treatment facilities, the aged are in jeopardy of being placed in situations with are not protective, and which may, in fact, have harmful repercussions. Thus, under the present system an elderly man who requires 24-hour nursing care can be transferred to a state hospital because this is the only facility which can serve those without funds and also has the medical/surgical unit necessary to care for such a person. However, few would argue that such placement is appropriate given the man's needs. Speaking about the negative impact of placement, and the power of economics one informant noted:

> The ultimate question is not what is best for you, but where will the Medicare/MediCal payments permit us to place you within our city's contract. It has not one damn thing to do with the well-being of the individual.

SUMMARY AND CONCLUSIONS

An important relationship exists between protective services for, and the cultural attitudes towards the aged. Cultural beliefs and attitudes have a direct, although sometimes delayed effect on law and on the kinds of medical intervention which it sanctions. The most sensitive indicator of these attitudes consists not of the written doctrines of law and medicine, but rather, of the implementation of such doctrines.

The decade covered by the archival records shows a significant transition in philosophy with respect to the disabled elderly. The records clearly show that there has been a tremendous outcry demanding that the civil liberties of those judged frail of mind and body, including the elderly, be protected. Moreover, the last decade has seen major changes in the assumptions on which we based decisions about involuntary incarceration, treatment, and loss of civil liberties. Today courts throughout the country are besieged with cases which both challenge and change not only the fundamental concept of parens patriae, but also the nature of the treatment and care which accompany all forms of protective intervention. Court records, along with observations and interviews performed for this study, show a complete reversal in the kinds of

medical and legal intervention practiced in the past. Most importantly, however, they show that the fundamental issues and cultural attitudes associated with protecting individuals deemed incapable of self-determination have not kept pace with the views of civil libertarians. Sarat, in his study of the American legal culture stated this point rather nicely when he said:

> In the areas of civil liberties and social control there appear to be considerable gaps between public opinion and legal policy. The law does not march hand in hand with public attitudes...American attitudes toward civil liberties and social control do not seem unequivocally democratic. Americans seem too willing to tolerate restrictions on the rights of those who are strange, different, or threatening even as they profess devotion to the principles from which those rights derive (1977:448).

Moreover, our cultural attitudes do not demand protection of those who are mentally and physically frail from loss of civil liberties, or the provision of excellent care to insure their well-being. Rather, those incapable of self-determination are viewed, as they always have been in our society, as problems which can not be solved and should, whenever possible, be isolated from the greater society. Fox, a historian said of the California mental health system of the 1920s:

> Local community authorities could still see to it that the psychopathic ward, the state hospitals, and the physicians that manned them, remained dedicated to the broader,

> traditional goal: the confinement of individuals who, whether mentally ill or not, seemed to threaten family stability or public tranquility (1978:77).

Similarly, the Commission on Law and Mental Health Problems (1979) stated that current protective services are still being distorted to treat those who "constitute public nuisances or embarrassments" (1979:3). (For further discussion of how public attitudes influence the administration of protective intervention see, Illich 1976; Butler and Lewis 1977; and Peszke 1975).

These underlying cultural attitudes are similar to those which our country has always held towards the impaired elderly, and there continues to exist today an ongoing cultural crisis of how to dispose of the "feebleminded." This is not to say that a great many legal and medical innovations have not been introduced in the care and treatment of those incapable of self-determination. However, beliefs concerning what constitutes appropriate intervention for homeless, indigent, and mentally feeble elderly people have remained consistent.

Richard Fox's book, So Far Disordered in Mind: Insanity in California, 1870-1930 (1978), describes the attitudes towards the mentally disabled 39 years before the passage of the Lanterman-Petris-Short Act, the legislation believed to have revolutionized the treatment

and care of California's mental patients. Upon closer examination we find that Fox speaks of a world in which people were railroaded into overcrowded asylums, in which funds for the administration of infirm persons were inadequate, in which sterilization crusades were implemented, not out of cruelty, but because of the belief that such procedures were necessary, and in which concerned professionals tried to serve a population whose members were, because of their appearance, behavior and problems, unacceptable to the greater society.

Times have changed, and it would be wrong to suggest that things are exactly as they once were. But, it would be equally wrong to suggest that severe problems do not still impede the care and treatment of the infirm elderly. Many of today's problems can be linked to the attitudes which our society holds towards those who are judged incapable of self-determination and who, for one reason or another, lack either the financial or social resources necessary to ensure their protection.

The following list of findings and recommendations are proposed to assist those charged with providing services for our society's debilitated elderly. Adequate services and programs will never be successfully implemented until the attitudes concerning the disposition of those isolated elderly--whose weakness of mind or body

makes self-protection impossible--are changed. Specifically, until we wish to invest the time, energy, and financial resources necessary to care for the old and infirm the trend of ignoring and isolating will continue, and the burden of caring for the mentally and physically infirm will be delegated to a few dedicated professionals who are given neither the power nor the resources to aid them.

Fiscal Management: Many of the aged who become entangled in the protective service system are victims of poor fiscal management. Failure to manage financial affairs adequately can have serious consequences for persons who can neither accept or be provided with assistance. Moreover, financial incompetence may result in the loss of independence, because anyone who is substantially unable to barter is also unable to provide for the necessities of life.

Still, another problem which falls under the category of fiscal managment is the failure of the Commitment system to administer monies for its conservatees. This system, governed by both State and county policy leaves a broad gap in services, so that the mentally impaired elderly who require fiscal assistance do not receive the help which they need (The Task Force for

Fiscal Management and Support Services for Seniors 1979). In fact, few mechanisms are available to aid those who require assistance in managing their personal incomes. The findings from this study indicate that assistance with their financial affairs would enable many of those presently entangled in Commitment and Probate systems to remain in the community rather than require that they be placed into a restrictive environment. Such assistance is presently available through living trusts, and other banking procedures.to people with money and property But for those with marginal incomes, whose monthly social security checks make the difference between freedom and incarceration, such needed services are unavailable. While the Probate system is ideally suited to assist the aged with the management of finances it is, unfortunately, administered in such as way as to exclude many of the indigent elderly who might benefit from the services and expertise which the system affords.

Recommendations: To some degree, the problem of access to Probate for the indigent and isolated elderly has been solved. Specifically, during the period of this study the Public Guardian's Office was forced to rescind the $6,000 criterion for eligibility. This change represented a major victory for community groups that had been unable to place isolated and indigent clients under the

Probate system. It came about during a public scandal in which the headlines on the front page of the San Francisco Chronicle read, "S.F. Agency Is Failing To Aid City's Helpless" (February 16,1981). Six days later, February 22, 1981, after several other newspaper articles, that the Chronicles' headlines read, "Public Guardian Drops $6,000 Requirement" demonstrated both the power of the press and the public fervor which was aroused against this agency. On May 9, 1981, the San Francisco Chronicle reported on the new rules voted into law by a joint committee of the Board of Supervisors. During the hearing one person was quoted as saying:

> [Speaking about the failure of the Public Guardian's Office to assist the poor] We've lost sight of the fact that here are a class of people that need something more...if you don't stand up for them, if you don't care, who is going to?

The policy change is a step in the right direction, but more must be done to ensure that the indigent aged have access to financial help and assistance. This single agency is ill-equipped to serve all of those who might benefit from the establishment of a protective relationship. To serve this class of elderly, a number of services are needed in addition to programs designed specifically to assist in money management. Social

workers should be bonded so that under certain circumstances, they could assist clients to budget their resources. The durable power of attorney is another suggestion which might have merit in assisting the aged, but then again, we would be dealing with a group of citizens whose higher incomes have already opened the door to greater options. Perhaps the most important change would be a governmental policy providing that a representative payee program be attached to all governmental assistance programs in order to assist those whose mental capacities prevent sound fiscal judgement. Under such a program, any government monies could be held under the control of a representative payee who would act on behalf of the elderly person found incapable of managing his own funds.

Placement: The elderly pose problems which are unlikely to arise in dealing with younger people. For example, because of biological infirmities attendant on old age, many of those enmeshed in protective services require some form of placement that will meet their complex needs. Furthermore, as this study found, many old men and women are involved in the mental health system because of placement problems. The lack of adequate facilities and the economic constraints placed on such

facilities intensify the difficulty of finding appropriate placement.

Our society lacks and needs levels of care designed for each type of problem, whether that problem be mental, biological, or a combination of the two, so that a given individual can be placed in the appropriate facility along a continuum of treatment that extends from the state hospital to the convalescent hospital. The reality of the situation is, however, that many of those who require treatment are unable to receive it without also having to accept, because of the unavailability of adequate hospital space, a greater degree of confinement than they require. Some patients are "locked down" more rigorously than they should be, while others in need of treatment are placed in board and care homes without needed medical or psychiatric care.

Recommendations: What we need is a wide range of treatment facilities, so that someone who needs care could enter and exit according to his specific needs. Most facilities are already overcrowded, and the chances of other facilities being built, especially in light of the current taxpayer's revolt, are slim. Current placement problems can be met, then, only by a greater investment of time in screening patients for placement. It goes without saying that resources may be conserved and used to greater

advantage in this way. It is irresponsible to keep an elderly woman not in need of psychiatric treatment in an acute psychiatric hospital at the cost of several hundred dollars per day because other, more appropriate space cannot be found for her, given the cost of such care, and given that she will probably not benefit from such intensive treatment.

The system must have the flexibility to place according to need. Although this suggestion appears to be simple enough, it is extremely difficult to implement. For this reason I would suggest that a special community board be established to inquire into the cases of those for whom placement is the major issue. This committee, comprised of doctors, lawyers, and community workers, would have the power to recommend placements and locate appropriate facilities for the old who require such aid. This method would help to protect such people from the consequences that could result from entanglement in the Commitment Court, a system which is presently used simply because it is the only system available which can remove an old man or woman needing care from his or her abode or the hospital.

Under the present system, it is necessary to declare someone incompetent before placement can be legally justified. Unfortunately such a policy can have

drastic consequences and is a prime example of the way in which the individual is made to fit into the established legal model. Those aged in need of protection must be given special consideration in issues of placement, and should not be subject to the rigors of the mental health system simply because the community has no other resources available with which to assist them. As this study shows, those professionals working in this field have no options open to them short of manipulating the current legal rubric as best they can to fit the specific needs of the frail aged. Powers to place must be developed so that those in need of protective care do not become victims of the present system.

Law: Age Specific: Many of the current legal statutes tend not to assist the aged, because they do not consider the special and unique problems of this group, such as, the special precautions needed to treat and medicate them. Especially faulty in this regard are the Commitment statutes which have failed to recognize the severity of placement of mentally and physically ill elderly men and women. The aged present some special problems which can not be classified under the legal rubric of mental illness, and they should not be forced to fit the existing intervention systems. For example, they

suffer from more biological problems than do younger people. Moreover, diagnosis and treatment may take longer with them than with younger people, and therefore many of the time frames established for the treatment of the population in general are not compatable with geriatic problems.

The current trend in the legal protection of the mentally infirm is to provide special protections and safeguards. Most of the problems found during the course of this study had little to do with the abuse of law, but rather, resulted from the inadequate alternatives and community services which forced professionals to manipulate the existing services to give some protection to the aged.

Moreover, that the powers of parens patriae are being eroded, and may, in the near future be almost non-existent results from the litigation which has been raised over placement, treatment, patient's rights, and medication. (See, for example, Tarasoff v. Board of Regents [1974] 118 Cal. Rgts. 129; Gomes v. Gaughan [1975] 422 U.S. 563; Katz v. Superior Court of the City and County of San Francisco [1977] 73 Cal. App. 3d 952; Rouse v. Cameron [1966] 373 F. 2d 451 [D.C. Cir. 1966]; O'Conner v. Donaldson [1975] 422 U.S. 563; Wyatt v. Stiockney [1972] 344 F. Supp. 387 [M.D. Ala. 1972]; Humphrey v.

Cady [1971] 405 U.S. 504; Winters v. Miller [1971] 446 F. 2d 65 [2nd Cir. 1971]; Vitek v. Jones 48 LW 4317; In re Roger S., 19 Cal. 3d 921 [1971].)

Recommendations: The current mental health laws should be changed to include specific statutes covering problems of the aged. For example, these statutes might include powers to place the patient, to detain him for additional evaluation, and to remove him from a physical care facility, without imposing on him the stigma which would result from his being declared mentally ill or incompetent, and without funneling him into the traditional mental health facilities simply because the statutes permit evaluation to take place only in an acute psychiatric hospital.

No matter how sophisticated we become in protecting the civil liberties of those frail of mind and body, the fact of aging remains: there will always be those who in their later years, grow into incapacity. If the present protective system is prohibited from protecting those weak of mind, it will also be prohibited from protecting those whose weakness of body makes self-determination impossible. Therefore, it is time to look to the future and to develop new protective mechanisms which avoid imposing the stigma of mental incompetency and grave disability, and

which deal effectively with the problems specific to the aged.

Financial Assistance: Waste of resources in our present protective service system results from duplication of services, for, both the Commitment and Probate systems have an investigative unit, a legal staff, and a social component: these services appear to duplicate each other. Furthermore, each system offers advantages not offered by the other. Probate, for example, has an excellent system for dealing with the finances of incapacitated persons, while the Commitment system has the ability to serve as conservator for all persons who require such services, regardless of their financial resources.

Recommendation: The California Legislature should investigate the possibility of joining the two systems into a unified protective service agency. New statutes should incorporate the best elements of both systems, and should maintain the flexibility necessary to provide the diversity of protections needed for each individual, so that everyone may be placed along a continuum of services ranging from simple fiscal assistance to long term incarceration in a mental health facility. Such reforms would provide not only the necessary widened range of services,

but also the increased financial resources accrued by the reduction of administrative cost associated with protecting the culture's aged. Moreover, if the two systems were joined, the present problems associated with "blocked access" or "too much access" would be partially resolved because everyone in need of protective services would be directed into one system, which would provide a wide and adequate range of services and programs.

GLOSSARY

Bond: a certificate imposed by law which is intended to protect the conservatee from damage or injury by the conservator.

Conservator: a protector or preserver of the person or property, or person and property of a conservatee.

Durable Power of Attorney: a proposed law which would allow the power of attorney document to remain valid if, or when, a person became mentally unsound.

Estate: both real and personal property to which one has a right or interest.

Guardian: a person lawfully invested with the power to act as protector or perserver of the person or property, or person and property of a conservatee.

Letters of Guardianship or Conservatorship: a commission placing a ward's or conservatee's property or person in the care of a guardian or conservator as directed by the court.

Parens Patriae: refers to the sovereign power of guardianship or conservatorship over any person under disability.

Petition: An application made to the court seeking authority to perform some act which requires the sanction of the court.

Power of Attorney: a legal document authorizing another to act as one's agent; however, by law this agreement is void once a person is adjudged to be unsound of mind.

Public Guardian's Office: a county agency with the power to act as conservator or guardian, as directed by the Probate Court.

Relatives within the Second Degree: this is normally defined as all adults of the immediate family and their children.

Representative Payee: a 3rd party who is appointed in the capacity of trustee payee. Such payees are only available to administer certain kinds of governmental benefits.

BIBLIOGRAPHY

Alexander, G.J. and T. Lewin
1972 The Aged and the Need for Surrogate Management. Syracuse: Syracuse University Press.

Bell, W.G., W. Schmidt, and K. Miller
1981 Public Guardianship and the Elderly: Findings from a National Study. Gerontologists 21(2):194-202.

Bernstein, M.C.
1969 Aging and the Law. In M.W. Riley, Jr. and M.E. Johnson eds. Aging and Society, Vol II, Aging and the Professionals. New York: Russell Sage Foundation. pp. 274-292.

Black, D.
1972 The Boundaries of Legal Sociology. Yale Law Journal 81(May):1086-1100

1976 The Behavior of Law. New York: Academic Press, Inc.

Blenker, M., M. Bloom and M. Nielson
1971 A Research and Demonstration Project of Protective Services. Social Casework 52:483.

Brenner, B.
1962 Denial of Due Process and Civil Rights to Aged Senile Persons Without Major Mental Impairment. New York State Journal of Medicine. 62:2406-2408.

Butler, R.N. and M.I. Lewis
1977 Aging and Mental Health: Positive Psychosocial Approaches. Saint Louis: The C.V. Mosby Company.

Chambliss, W.J.
1973 The Law of Vagrancy. Warner Modular Publication, Module 4:1-10.

Cohen E.S.
1967 Old Age and the Law. Women Lawyer's Journel 53:96-105

1978 Civil Liberties and the Frail Elderly. Society (July/August):34-42.

Commission on Law and Mental Health Problems
1979 The State Bar of California. San Francisco, California.

Dershowitz, A.N.
1968 Psychiatry in the Legal Process: A Knife that Cuts Both Ways. Judicature 5:370-377.

ENKI
1972 A Study of California's New Mental Heath Law. (1969-1971). Chatsworth, California: ENKI Corporation.

Ennis, B.J.
1978 Judicial Involvement in the Public Practice of Psychiatry. In Law and the Mental Health Professions: Friction at the Interface. W. Barton and C. Sanborn, eds. Pp. 5-17. New York: International Universities Press, Inc.

Estroff, S.E.
1981 Making it Crazy: An Ethnography of Psychiatric Clients in an American Community. Berkeley: University of California Press.

Ferguson, E.J.
1978 Protecting the Vulnerable Adult: A Perspective on Policy and Program Issues in Adult Protective Services. Michigan: University of Michigan.

Field, M.J.
1960 Search for Security: An Ethno-Psychiatric Study of Rural Ghana. New York: W.W. Norton, 1970.

Fox, R.W.
1978 So Far Disordered in Mind: Insanity in California, 1870-1930. Berkeley: University of California Press.

Goffman, E.
1961 Asylums. New York: McGraw-Hill.

Gunn, A.E.
1977 Mental Impairment in the Elderly: Medical-Legal Assessment. Journal of the American Geriatric Society. 25(5):193-198.

Illich, I.
1976 Medical Nemesis: The Expropriation of Health. Toronto: Bantam Books.

Laing, R.
1967 The Politics of Experience. New York: Ballantine Books.

Llewellyn, K., and E. Hoebel
1941 The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence. Norman: University of Oaklahoma Press.

Malinowski, B.
1922 Argonauts of the Western Pacific. London: Routledge.

1945 The Dynamics of Culture Change. New Haven: Yale University Press.

Nader, L.
1980 No Access to Law: Alternatives to the American Judicial System. New York: Academic Press.

Nader, L., and R. Singer
1976 Dispute Resolution and the Law in the Future: What are the Choices. California State Bar Journal (supplemental) 51(4):281-286,311-320

Peszke, M.A.
1975 Involuntary Treatment of the Mentally Ill: The Problem of Autonomy. Illinois: Charles C. Thomas.

Pound, R.
1906 The Causes of Popular Dissatisfaction with the Administration of Justice. Reports of American Bar Association. 29(1):395-417.

1939 The History and System of the Common Law. New York: P.F. Collier.

Quarterly Reports on Involuntary Detentions.
1979 Department of Mental Health. Health and Welfare Agency, State of California. (March, June, September, December.)

Radcliffe-Brown, A.R.
1933 Primitive Law. In Structure and Function in Primitive Society: Essays and Addresses. Pp. 212-219. New York: Free Press, 1965.

Redfield, Robert
1964 Primitive Law. University of Cincinnati Law Review 33(1):1-22.

Ruffin, J., and P. Urquhart
1980 A Comprehensive Geriatric Mental Health Service in San Francisco. Int. J. Ment. Health. Vol 8. No. 3-4. Pp. 101-116.

Sarat, A.
1977 Studying American Legal Culture: An Assessment of Survey Evidence. Law and Society Review 11(3):427-488.

Scheff, T.
1964 Being Mentally Ill. Chicago: Aldine.

Schwitzgebel, R.L. and R.K. Schwitzgebel
1980 Law and Psychological Practice. New York: John Wiley & Sons.

Selby, Henry, A.
1974 Zapotec Deviance: The Convergence of Folk and Modern Sociology. Austin: University of Texas Press.

Singer, D.H., and W.O. Krohn
1924 Insanity and Law: A Treatise on Forensic Psychiatry. Philadelphia: P. Blackiston's Sons & Company.

Social and Economic Data
1981 Employment Data and Research. San Francisco City and County. FY 1980-1981.

Spradley, J.P.
1979 The Ethnographic Interview. New York: Holt, Rinehart and Winston.

1970 You Owe Yourself a Drunk: An Ethnography of Urban Nomads. Boston: Little, Brown and Company.

Stone, A.A.
1975 Mental Health and Law: A System in Transition. U.S. Department of HEW, Welfare Publication 75-176. National Institute of Mental Health. Center of Crime and Delinquency. Rockville Maryland.

Swett, D.H.
1969 Cultural Bias in American Legal System. Law and Society Review 4:79-110

Szasz, T.S.
1960 The Myth of Mental Illness. American Psychologist 15:113-118.

1963 Law, Liberty and Psychiatry. New York: The Macmillan Company.

Turner, V.W.
1957 Schism and Continuity in an African Society: A Study of Ndembu Village Life. Manchester: Manchester University Press.

Warren, C.A.B.
1977 Involuntary Commitment For Mental Disorder: The Application of California's Lanterman-Petris-Short Act. Law and Society Review 11(4)629-649.

NOTES

1. Specifically, the Lanterman-Petris-Short Act, hereafter referred to as LPS, Welfare and Institutions Code Sections 5000-5404.1.

2. The provisions for guardianship were not repealed when conservatorship statute was operationalized. Consequently, until the guardianship law was repealed on January 1,1981, California had both a guardianship statute (Probate Code Sections 1400-1700) and a conservatorship statute (Probate Code Sections 1701-2207).

3. Unless otherwise noted the Probate Codes cited are taken from the 1981 law, which is similar to the old laws, but which may prove more useful to the reader.

4. The demographic data on San Francisco comes from the most recent projections prepared for the City and County of San Francisco, and are the most reliable statistics available; however, these are population estimates and not actual census computations and should be viewed accordingly.

5. All quotations cited in this text come from the forty four professional interviews conducted in connection with this study. Since the majority of the interviews were electronically recorded it is possible to include exact quotations, and thus to prevent any distortion of the informant's comments. However, to ensure confidentiality the informant's profession was sometimes withheld.

6. Pseudonyms have been used throughout this study, and individual cases which could be easily identified have been altered to preserve anonymity, but not in such a way as to distort the preceedings or the results of the adjudication. Moreover, further to protect the identity of my sources I have selected to use the male gender throughout.

APPENDIX 1

Courtroom Observations: Data Collection Forms

Forms used to assist in the data collection
of observed cases in Probate and Commitment Courts.

DATA COLLECTION: OBSERVED CASES PROBATE COURT

Date:_____

Case Number:_____

Length of Case: (time)
Beginning_____
End_____

Removed from calender (reasons)_____
_____
_____
_____

Brief Summary of Hearing_____
_____
_____
_____

ACTIONS POSSIBLE	PETITION FOR	COURT ORDER
Appointment of Guardian		
Guardian of Person		
Guardian of Estate		
Guardian Person/Estate		
Appointment of Conservator		
Conservator of Person		
Conservator of Estate		
Conservator Person/Estate		
Removal of Guardian		
Removal of Conservator		
Change of Guardian		
Change of Conservator		
Other		

FISCAL REPORTS	REPORTED VALUE DECLARED IN COURT
Estate	
Pensions	
Social Security	
Stocks and Bonds	
Other	
Total	
Bond Required by Court	
Observed (2)	

CONFLICT DETAILS OF CONFLICT (whom?, why?, how?)

Contested _____ _____
Uncontested _____ _____

Conflict Between Whom? (Outline actors, actions and issues)_____
_____
_____
_____

ACTORS IN COURT

	IN COURT	ETHNICITY	SEX	AGE	WITNESS-(sworn)
Conservatee					
Ward					

	DEFENDING	ETHNICITY	SEX	AGE	MISC. DATA
Lawyer: 1.					
2.					
3.					
Public 1.					
Defender 2.					
Legal aid 1.					
2.					
3.					

	RELATION	ETHNICITY	SEX	AGE	WITNESS-(sworn)
Petitioner 1.					
2.					
3.					
4.					
Family/ 1.					
Friends 2.					
3.					
4.					

Observed (3)

Public Guardian (role in case)_____

_____

_____

		CAPACITY	ETHNICITY	SEX	AGE	WITNESS-(sworn)
Medical Personnel	1.					
	2.					
	3.					
	4.					
Bank Officials	1.					
	2.					
Others	1.					
	2.					
	3.					
	4.					

ENVIRONMENT	SUMMARY OF IMPORTANT HOUSING INFORMATION
State Hospital (LPS)	
Board and Care	
Nursing Facility	
Private Home (own)	
Private Home (assist)	
Hospital (physical)	
Apartment	
Hotel	
Other	
Observed (4)	

Blank Page: Testimony and Notes.

DATA COLLECTION: OBSERVED CASES COMMITMENT COURT

Date:_____

Case Number:_____

Length of Case: (time)
Beginning_____
End_____

Brief Summary of Hearing_____

ACTORS IN COURT

PATIENT Sex_____ Age_____ Ethnicity_____
Description:_____

Testimony (summary):_____

PSYCHIATRISTS Sex_____ Age_____ Ethnicity_____
Relationship to Patient:_____

Testimony (summary):_____

PSYCHIATRISTS Sex_____ Age_____ Ethnicity_____
Relationship to Patient:_____

Testimony (summary)_____

Observed (2)

OTHER Sex_____ Age_____ Ethnicity_____
Relationship to Patient:_____

Participation/Role:_____

OTHER Sex_____ Age_____ Ethnicity_____
Relationship to Patient:_____

Participation/Role:_____

DISTRICT ATTORNEY_____

PUBLIC DEFENDER_____

JUDGE_____

CONSERVATOR(S)_____

MEDICAL SUMMARY

DIAGNOSIS:_____

TREATMENT PLAN:_____

MEDICATIONS:_____

INSTITUTION(S):_____

BEHAVIORAL MANIFESTATIONS OF DISEASE:_____

_____

_____

Observed (3)

LEGAL SUMMARY

STRATEGY DISTRICT ATTORNEY:_____

_____

_____

STRATEGY PUBLIC DEFENDER:_____

_____

_____

OUTCOME OF HEARING:_____

_____

_____

SPECIAL CONSIDERATIONS MADE BY COURT:_____

_____

_____

CONFLICT: OUTSIDE NORMAL ADVERSARY MODEL (describe):_____

_____

_____

_____

Observed (4)

Note Page: Testimony and Notes.

APPENDIX 2

Archival Materials: Data Collection Forms

Forms used to record information taken from the archives of the Probate and Commitment Courts.

ARCHIVAL DATA COLLECTION: PRE-CODED COMMITMENT

Case code:_____ Card Number 01

Columns

INVESTIGATIVE REPORT

1. ADDRESS OF CONSERVATEE (census) ( ) ( ) ( ) 9-11

_____

2. LIVING ARRANGEMENTS OF CONSERVATEE PRIOR TO FILING OF PETITION ( ) ( ) 12-13
   ( ) Nursing Home 01
   ( ) Board and Care Home 02
   ( ) Retirement Facility 03
   ( ) Private Home (unaided) 04
   ( ) Private Home (aided) 05
   ( ) Apartment 07
   ( ) Unsure 08
   ( ) Trailer 09
   ( ) Hospital-Physical Care 10
   ( ) State Hospital _____ 11
   ( ) Hosptial-Psychiatric Care 12
   ( ) Foster Home 13
   ( ) Locked Facility 14
   ( ) Others: Post Code_____16-99

3. AGE OF CONSERVATEE: INITIAL PETITION (actual age) ( ) ( ) ( ) 14-16

4. SEX OF CONSERVATEE ( ) 17
   ( ) Male 1
   ( ) Female 2
   ( ) Unsure 3

5. RECOMMENDATIONS OF INVESTIGATOR ( ) 18
   ( ) Approve Conservatorship 1
   ( ) Deny Conservatorship 2
   ( ) Court's Decision 3

6-8. RECOMMENDATIONS BY INVESTIGATORS (post code)
   ( ) 6. _____ ( ) ( ) 19-20
   ( ) 7. _____ ( ) ( ) 21-22
   ( ) 8. _____ ( ) ( ) 23-24

9. FINANCIAL STATUS/GOVERNMENT ASSISTANCE ( ) ( ) 25-26
   ( ) SSI 01
   ( ) SSI & SSP 02
   ( ) GA 03
   ( ) SSI & GA 04
   ( ) SS 05
   ( ) None 06
   ( ) Other (post code) 07-99

10. FINANCIAL STATUS (list other sources/amounts).
   ( ) First_____ ( ) ( ) 27-28
   ( ) Second_____ ( ) ( ) 29-30
   ( ) Third_____ ( ) ( ) 31-32

11. EDUCATION LEVEL (highest attended) ( ) 33-34

12. CONSERVATOR(S) (relationship codes)
   ( ) First_____ ( ) ( ) 35-36
   ( ) Second_____ ( ) ( ) 37-38
   ( ) Third_____ ( ) ( ) 39-40

CLINICAL SUMMARY

15-17. CLINICAL DIAGNOSES (post code)
   ( ) 15. _____ ( ) ( ) 41-42
   ( ) 16. _____ ( ) ( ) 43-44
   ( ) 17. _____ ( ) ( ) 45-46

18-22. BEHAVIORAL MANIFESTATIONS (post code)
   ( ) 18. _____ ( ) ( ) 47-48
   ( ) 19. _____ ( ) ( ) 49-50
   ( ) 20. _____ ( ) ( ) 51-52
   ( ) 21. _____ ( ) ( ) 53-54
   ( ) 22. _____ ( ) ( ) 55-56

23. PHYSICAL PROBLEMS
   ( ) Yes ( ) 57
   ( ) No (skip to Q 29)

24-28. LIST OF PHYSICAL PROBLEMS (post code)
   ( ) 24. _____ ( ) ( ) 58-59
   ( ) 25. _____ ( ) ( ) 60-61
   ( ) 26. _____ ( ) ( ) 62-63
   ( ) 27. _____ ( ) ( ) 64-65
   ( ) 28. _____ ( ) ( ) 66-67

29. HOSPTIAL GIVING TREATMENT ( ) ( ) 68-69
( ) St. Francis Hospital 01
( ) Mission Terrace Hospital 02
( ) San Francisco General 03
( ) St. Mary's/McAuley Institute 04
( ) Presbyterian/Pacific Medical Center 05
( ) Langley Porter 06
( ) Mt. Zion Hospital 07
( ) Post Code Others _____ 08-99

30. JUSTIFICATION FOR GRAVE DISABILITY ( ) 70
( ) As a result of a Mental Disorder 1
( ) By imparirment by Chronic Alcoholism 2
( ) Unsure 3

31. JUSTIFICATION FOR SEEKING INVOLUNTARY ( ) 71
( ) Unwilling to accept treatment 1
( ) Incapable of accepting treatment 2
( ) Unsure 3

32. PLACEMENT PLANS SINCE PETITION FILED ( ) ( ) 72-73
( ) Nursing Home 01
( ) State Hospital 02
( ) Locked Facility 03
( ) Board and Care 04
( ) Post Code Others 05-99

card 02
columns

33-36. MEDICATIONS (post code)
( ) 33. _____ ( ) ( ) 9-10
( ) 34. _____ ( ) ( ) 11-12
( ) 35. _____ ( ) ( ) 13-14
( ) 36. _____ ( ) ( ) 15-16

37. PRIOR PSYCHIATRIC HOSPITALIZATIONS ( ) 17
( ) Yes 1
( ) No 2 (skip to Q 39)
( ) Unsure 3

38. HISTORY OF PRIOR HOSPITALIZATIONS ( ) ( ) 18-19
( ) Within last year only 01
( ) 1-5 year history 02
( ) 6-10 year history 03
( ) 11-15 year history 04
( ) 16-20 year history 05
( ) 20+ year history 06
( ) Yes, but exact number unknown 08

JUDICIAL REVIEW

39-41. DATE TEMPORARY PETITION FILED
39. Month_____ ( ) ( ) 20-21
40. Day_____ ( ) ( ) 22-23
41. Year_____ ( ) ( ) 24-25

42-44. DATE TEMPORARY PETITION RULED
42. Month_____ ( ) ( ) 26-27
43. Day_____ ( ) ( ) 28-29
44. Year_____ ( ) ( ) 30-31

45. COURT ACTION ON TEMPORARY PETITION ( ) 32
( ) Approved, unchanged 1
( ) Approved, changes 2
( ) Denied 3
( ) Never ruled 4
( ) Unsure 8

46-48. DATE REGULAR PETITION FILED
46. Month_____ ( ) ( ) 33-34
47. Day_____ ( ) ( ) 35-36
48. Year_____ ( ) ( ) 37-38

49-51 DATE REGULAR PETITION RULED
49. Month_____ ( ) ( ) 39-40
50. Day_____ ( ) ( ) 41-42
51. Year _____ ( ) ( ) 43-44

52. COURT ACTION ON REGULAR PETITION ( ) 45
( ) Approved, unchanged 1
( ) Approved, changes 2
( ) Denied 3
( ) Never Ruled 4
( ) Unsure 8

53-55. DATE OF FINAL DISPOSITION
53. Month _____ ( ) ( ) 46-47
54. Day_____ ( ) ( ) 48-49
55. Year_____ ( ) ( ) 50-51

56. REASON FOR FINAL DISPOSTION (post code) ( ) ( ) 52-53
Reason_____
_____

57. JURY TRIAL DEMAND ( ) 54
( ) Yes 1
( ) No 2
( ) Unsure 8

58. OUTCOME OF TRIAL (post code) ( ) ( ) 55-56
Outcome:_____
_____

59. CONSERVATEE UNDER PROBATE ( ) 57
( ) Yes 1
( ) No 2
( ) Unsure 8

60. HAS CONSERVATORSHIP BEEN RENEWED ( ) 58
( ) Yes 1
( ) No 2 (skip to Q. 62)

61. HOW MANY TIMES BEEN RENEWED ( ) ( ) 59-60
(code actual number)

62. WITHDRAWL OF PETITION FILED ( ) 61
( ) Yes 1
( ) No 2 (skip to Q. 64)
( ) Unsure 3

63. WHY WAS PETITION WITHDRAWN (post code) ( ) ( ) 62-63
Reason_____
_____

64. WAS PETITION DROPPED ( ) 64
( ) Yes 1
( ) No 2 (skip to Q. 66)
( ) Unsure 8

65. REASON PETITION WAS DROPPED (post code) ( ) 65
Reason_____
_____

66. CONFLICT OTHER THAN THAT RELATED ( ) ( ) 66-67
TO LPS FILING
( ) None 01
( ) Jail/Violence or Assaultive 02
( ) Jail/non-violent 03
( ) Family Violence 04
( ) Family Conclict/non-violent 05
( ) Jail/Unsure of charge 06
( ) Other post code 07-99

67. MARITAL STATUS ( ) 68
( ) Married 1
( ) Single/Never Married 2
( ) Divorced 3
( ) Separated 4
( ) Widowed 5
( ) Unsure 6

Card 03
column

68. TOTAL NUMBER OF RELATIVES (2nd Degree)
SENT NOTICES
actual Number_____ ( ) ( ) 9-10

69-80. FAMILY OF PROPOSED CONSERVATEE (post code)

69. Relationship _____ ( ) ( ) 11-12
Sex_____ ( ) 13
Role_____ ( ) ( ) 14-15
Residence_____ ( ) ( ) ( ) 16-18

(NOTE QUESTIONS 70-80 ARE THE SAME AS QUESTION 69)

ARCHIVAL DATA COLLECTION: PRE-CODED PROBATE

Case Code:_____ Card Number 01 Columns

STAGE ONE: TEMPORARY

1. TEMPORARY PETITION FILED ( ) 9
   ( ) Yes 1
   ( ) No 2 (skip to 28)

2. TYPE OF TEMPORARY PETITION ( ) 10
   ( ) Temporary Guardian 1
   ( ) Temporary Conservator 2
   ( ) Public Guardian 3

3. ADDITONAL POWERS REQUESTED ( ) 11
   ( ) Yes 1
   ( ) No 2
   ( ) Unsure 8

4-6. DATE TEMPORARY PETITION FILED
   4. Month_____ ( ) ( ) 12-13
   5. Day_____ ( ) ( ) 14-15
   6. Year_____ ( ) ( ) 16-17

7. NOMINATION FILED IN TEMPORARY ( ) 18
   ( ) Yes 1
   ( ) No 2
   ( ) Unsure 8

8. CONSENT TO ACT FILED IN TEMPORARY ( ) 19
   ( ) Yes 1
   ( ) No 2
   ( ) Unsure 8

9. AFFIDAVIT OF MEDICAL DOCTOR FILED ( ) 20
   ( ) Yes 1
   ( ) No 2
   ( ) Unsure 8

10-18. WHO FILED TEMPORARY PETITION (multiple code)

   10. Proposed Conservatee/Ward ( ) 21
      ( ) Yes 1
      ( ) No 2

11. Public Guardian ( ) 22
( ) Yes 1
( ) No 2

12. Bank ( ) 23
( ) Yes 1
( ) No 2

13. Family Member(s) ( ) 24
( ) Yes 1
( ) No 2

14-15. Family Relationships (post code)
14. First_____ ( ) ( ) 25-26
15. Second_____ ( ) ( ) 27-28

16. Non-Family Member(s) ( ) 29
( ) Yes 1
( ) No 2

17-18. Non-Family Relationships
17. First_____ ( ) ( ) 30-31
18. Second_____ ( ) ( ) 32-33

19-21. DATE TEMPORARY PETITION ACTED ON
19. Month_____ ( ) ( ) 34-35
20. Day_____ ( ) ( ) 36-37
21. Year_____ ( ) ( ) 38-39

22. COURT ACTION ON TEMPORARY PETITION ( ) 40
( ) Approved, unchanged 1
( ) Approved, changed 2
( ) Denied 3
( ) Never Ruled 4
( ) Unsure 8

23. DID COURT SET BOND ( ) 41
( ) Yes 1
( ) No 2 (skip to Q 25)
( ) Unsure 8

24. TEMPORARY BOND--
amount ( ) ( ),( ) ( ) ( ),( ) ( ) ( ) 42-49

25. TEMPORARY LETTERS SENT TO PETITIONER(S) ( ) 50
( ) Yes 1 (skip to Q. 26)
( ) No 2
( ) Never Sent 3
( ) Unsure 8

26-27. TO WHOM TEMPORARY LETTERS ISSUED (post code)
26. First:_____ ( ) ( ) 51-52
27. Second:_____ ( ) ( ) 53-54

STAGE ONE GENERAL

Card Number 02
Column

28. GENERAL PETITION FILED ( ) 9
( ) Yes 1
( ) No 2 (skip to 28)

29. TYPE OF GENERAL PETITION ( ) 10
( ) Temporary Guardian 1
( ) Temporary Conservator 2
( ) Public Guardian 3

30. ADDITONAL POWERS REQUESTED ( ) 11
( ) Yes 1
( ) No 2
( ) Unsure 8

31-33. DATE GENERAL PETITION FILED
31. Month_____ ( ) ( ) 12-13
32. Day_____ ( ) ( ) 14-15
33. Year_____ ( ) ( ) 16-17

34. NOMINATION FILED IN GENERAL ( ) 18
( ) Yes 1
( ) No 2
( ) Unsure 8

35. CONSENT TO ACT FILED IN GENERAL ( ) 19
( ) Yes 1
( ) No 2
( ) Unsure 8

36. AFFIDAVIT OF MEDICAL DOCTOR FILED ( ) 20
( ) Yes 1
( ) No 2
( ) Unsure 8

37-45. WHO FILED GENERAL PETITION (multiple code)

37. Proposed Conservatee/Ward ( ) 21
( ) Yes 1
( ) No 2
38. Public Guardian ( ) 22
( ) Yes 1
( ) No 2

39. Bank ( ) 23
( ) Yes 1
( ) No 2

40. Family Member(s) ( ) 24
( ) Yes 1
( ) No 2

41-42. Family Relationships (post code)
14. First_____ ( ) ( ) 25-26
15. Second_____ ( ) ( ) 27-28

43. Non-Family Member(s) ( ) 29
( ) Yes 1
( ) No 2

44-45. Non-Family Relationships
17. First_____ ( ) ( ) 30-31
18. Second_____ ( ) ( ) 32-33

46-48. DATE GENERAL PETITION ACTED ON
19. Month_____ ( ) ( ) 34-35
20. Day_____ ( ) ( ) 36-37
21. Year_____ ( ) ( ) 38-39

49. COURT ACTION ON GENERAL PETITION ( ) 40
( ) Approved, unchanged 1
( ) Approved, changed 2
( ) Denied 3
( ) Never Ruled 4
( ) Unsure 8

50. DID COURT SET BOND ( ) 41
( ) Yes 1
( ) No 2 (skip to Q 25)
( ) Unsure 8

51. GENERAL BOND--
amount ( ) ( ),( ) ( ) ( ),( ) ( ) ( ) 42-49

52. GENERAL LETTERS SENT TO PETITIONER(S) ( ) 50
( ) Yes 1 (skip to Q. 26)
( ) No 2
( ) Never Sent 3
( ) Unsure 8

53-54. TO WHOM GENERAL LETTERS ISSUED (post code)
26. First:_____ ( ) ( ) 51-52
27. Second:_____ ( ) ( ) 53-54

Card Number 03
Column

STAGE TWO: OPTIONS BEFORE

55. WAS PROPOSED CONSERVATEE REPRESENTED BY PRIVATE COUNSEL ( ) 9
    ( ) Yes 1
    ( ) No 2
    ( ) Unsure 8

56. WAS LEGAL COUNSEL APPOINTED BY THE COURT ( ) 10
    ( ) Yes 1
    ( ) No 2 (skip to Q. 58)
    ( ) Unsure 8

57. WHAT TYPE OF LEGAL COUNSEL WAS APPOINTED ( ) 11
    ( ) Public Defender 1
    ( ) Private Attorney 2
    ( ) Unsure 3

58. REQUEST FOR DISMISSAL FILED ( ) 12
    ( ) Yes 1
    ( ) No 2 (skip to 60)
    ( ) Unsure 8

59. COURT ACTION ON DISMISSAL ( ) 13
    ( ) Approved 1
    ( ) Denied 3
    ( ) No 2
    ( ) Unsure 8

60. AMMENDED PETITION FILED ( ) 14
    ( ) Yes 1
    ( ) No 2
    ( ) Unsure 8

61. OBJECTIONS TO PETITION FILED ( ) 15
    ( ) Yes 1
    ( ) No 2 (skip to 66)
    ( ) Unsure 8

62-63 WHAT ARE THE OBJECTIONS
    62. First:_____ ( ) ( ) 16-17
    63. Second:_____ ( ) ( ) 18-19

64-65. WHO FILED OBJECTIONS
    64. First:_____ ( ) ( ) 20-21
    65. Second:_____ ( ) ( ) 22-23

66. WITHDRAWL OF PETITION ( ) 24
( ) Yes 1
( ) No 2 (skip to Q. 68)
( ) Unsure 8

67. WAY WAS PETITION WITHDRAWN ( ) ( ) 25-26
reason_____

68. JURY TRIAL REQUESTED ( ) 27
( ) Yes 1
( ) No 2 (skip to Q. 73)
( ) Unsure 8

69-70 WHY WAS JURY TRIAL REQUESTED
First:_____ ( ) ( ) 32-33
Second:_____ ( ) ( ) 34-35

73. PETITION WAS DROPPED ( ) 36
( ) Yes 1
( ) No 2 (skip to 75)
( ) Unsure 8

74. REASON PETITION WAS DROPPED ( ) ( ) 37-38
reason_____

75. OTHER ACTIONS PRIOR TO HEARING ( ) ( ) 39-40
what_____

Card Number 04
Column

STAGE TWO: OPTIONS COUNTER PETITION

76. COUNTER PETITION FILED ( ) 9
( ) Yes 1
( ) No 2 (skip to 28)

77. TYPE OF COUNTER PETITION ( ) 10
( ) Temporary Guardian 1
( ) Temporary Conservator 2
( ) Public Guardian 3

78. ADDITONAL POWERS REQUESTED ( ) 11
( ) Yes 1
( ) No 2
( ) Unsure 8

79-81. DATE COUNTER PETITION FILED

79. Month_____ ( ) ( ) 12-13
80. Day_____ ( ) ( ) 14-15
81. Year_____ ( ) ( ) 16-17

82. NOMINATION FILED IN COUNTER ( ) 18
( ) Yes 1
( ) No 2
( ) Unsure 8

83. CONSENT TO ACT FILED IN COUNTER ( ) 19
( ) Yes 1
( ) No 2
( ) Unsure 8

84. AFFIDAVIT OF MEDICAL DOCTOR FILED ( ) 20
( ) Yes 1
( ) No 2
( ) Unsure 8

85-93. WHO FILED COUNTER PETITION (multiple code)

85. Proposed Conservatee/Ward ( ) 21
( ) Yes 1
( ) No 2
86. Public Guardian ( ) 22
( ) Yes 1
( ) No 2
87. Bank ( ) 23
( ) Yes 1
( ) No 2
88. Family Member(s) ( ) 24
( ) Yes 1
( ) No 2
89-90. Family Relationships (post code)
14. First_____ ( ) ( ) 25-26
15. Second_____ ( ) ( ) 27-28

91. Non-Family Member(s) ( ) 29
( ) Yes 1
( ) No 2

92-93. Non-Family Relationships
17. First_____ ( ) ( ) 30-31
18. Second_____ ( ) ( ) 32-33

94-96. DATE COUNTER PETITION ACTED ON

94. Month_____ ( ) ( ) 34-35
95. Day_____ ( ) ( ) 36-37
96. Year_____ ( ) ( ) 38-39

97. COURT ACTION ON COUNTER PETITION ( ) 40
( ) Approved, unchanged 1
( ) Approved, changed 2
( ) Denied 3
( ) Never Ruled 4
( ) Unsure 8

98. DID COURT SET BOND ( ) 41
( ) Yes 1
( ) No 2 (skip to Q 25)
( ) Unsure 8

99. COUNTER BOND--
Amount ( ) ( ),( ) ( ) ( ),( ) ( ) ( ) 42-49

100. COUNTER LETTERS SENT TO PETITIONER(S) ( ) 50
( ) Yes 1 (skip to Q. 26)
( ) No 2
( ) Never Sent 3
( ) Unsure 8

101-102. TO WHOM COUNTER LETTERS ISSUED (post code)
26. First:_____ ( ) ( ) 51-52
27. Second:_____ ( ) ( ) 53-54

Card Number 05
Column

STAGE THREE: ACTIONS AFTER

103-105. PETITION(S) FOR RESIGNATION FILED
103. ( ) Yes 1 ( ) 9
( ) No 2
104. ( ) Yes 1 ( ) 10
( ) No 2
105 ( ) Yes 1 ( ) 11
( ) No 2

106-108. COURT ACTIONS ON RESIGNING PETITIONS
106. ( ) Approved 1 ( ) 12
( ) Denied 2
( ) Never Ruled 3
107. ( ) Approved 1 ( ) 13
( ) Denied 2
( ) Never Ruled 3
108. ( ) Approved 1 ( ) 14
( ) Denied 2
( ) Never Ruled 3

109-111. REASONS GIVEN FOR RESIGNATION

109. First:_____ ( ) ( ) 15-16
110. Second:_____ ( ) ( ) 17-18
111. Third:_____ ( ) ( ) 19-20

112-114. WHO RESIGNED

112. First:_____ ( ) ( ) 21-22
113. Second:_____ ( ) ( ) 23-24
114. Third:_____ ( ) ( ) 25-26

115-117. PETITION(S) FOR SUCCESSOR FILED

115. First:_____ ( ) 27
( ) Yes 1
( ) No 2
116. Second:_____ ( ) 28
( ) Yes 1
( ) No 2
117. Third:_____ ( ) 29

118-120. COURT ACTION(S) ON SUCCESSOR PETITIONS

118. First:_____ ( ) 30
( ) Approved 1
( ) Denied 2
( ) Never Ruled 3
119. Second:_____ ( ) 31
( ) Approved 1
( ) Denied 2
( ) Never Ruled 3
120 First:_____ ( ) 32
( ) Approved 1
( ) Denied 2
( ) Never Ruled 3

121-123. OTHER ACTION(S) PRECIPITATED BY SUCCESSOR ACTION

121. First:_____ ( ) ( ) 33-34
122. Second:_____ ( ) ( ) 35-36
123. Third:_____ ( ) ( ) 37-38

124.126. WHO APPOINTED AS SUCCESSOR

124. First:_____ ( ) ( ) 39-40
125. Second:_____ ( ) ( ) 41-42
126. Third:_____ ( ) ( ) 43-44

127. PETITION TRANSFERRED ANOTHER COUNTY ( ) 45
( ) Yes 1
( ) No 2 (skip to Q.129)
( ) Unsure 8

128. COURT ACTION ON TRANSFER PETITION ( ) 46
( ) Yes 1
( ) No 2
( ) Unsure 8

129. APPEAL FILED ( ) 47
( ) Yes 1
( ) No 2 (skip to Q. 136)
( ) Unsure 8

130-131. APPEAL FILED BY WHO
130. First:_____ ( ) ( ) 48-49
131. Second:_____ ( ) ( ) 50-51

132-133. REASONS FOR APPEAL
132. First:_____ ( ) ( ) 52-53
133. Second:_____ ( ) ( ) 54-55

134-134. OUTCOME OF APPEAL
999. First:_____ ( ) ( ) 56-57
999. Second:_____ ( ) ( ) 58-59

136. PETITION FOR REMOVAL CONSERVATOR ( ) 60
( ) Yes 1
( ) No 2 (skip to Q. 142)
( ) Unsure 8

137. COURT ACTION ON REMOVAL ( ) 61
( ) Approval 1
( ) Denied 2
( ) Never Ruled 3
( ) Unsure 8

138-139. WHO FILED FOR REMOVAL
138. First:_____ ( ) ( ) 62-63
139. Second:_____ ( ) ( ) 64-65

140-141. REASONS GIVE FOR FILING REMOVAL PETITON
140. First:_____ ( ) ( ) 66-67
141. Second:_____ ( ) ( ) 68-69

STAGE FOUR: TERMINATION ACTIONS

Card Number 06
Columns

142. PETITION TO TERMINATE CONSERVATORSHIP ( ) 9
( ) Yes 1
( ) No 2 (skip to Q. 149)
( ) Unsure 8

143. COURT ACTION ON PETITION TO TERMINATE ( ) 10
( ) Approved 1
( ) Denied 2
( ) Never ruled 3
( ) Unsure 8

144-145. REASONS FOR SEEKING TERMINATION
144. First:_____ ( ) ( ) 11-12
145. Second:_____ ( ) ( ) 13-14

146-148. DATE COURT RULED ON TERMINATION PETITION
146. Month_____ ( ) ( ) 15-16
147. Day_____ ( ) ( ) 17-18
148. Year_____ ( ) ( ) 19-20

149-151. PETITION(S) TO RESTORE TO CAPACITY
149. First:_____ ( ) 21
( ) Yes 1
( ) No 2
150. Second:_____ ( ) 22
( ) Yes 1
( ) No 2
151. Third:_____ ( ) 23
( ) Yes 1
( ) No 2

152-154. COURT ACTION ON RESTORATION PETITION(S)
152. First:_____ ( ) 24
( ) Yes 1
( ) No 2
153. Second:_____ ( ) 25
( ) Yes 1
( ) No 2
154. Third:_____ ( ) 26
( ) Yes 1
( ) No 2

155-157. IF RESTORED TO CAPACITY GIVE DATE OF RESTORATION
155. Month_____ ( ) ( ) 27-28
156. Day_____ ( ) ( ) 29-30
157. Year_____ ( ) ( ) 31-32

158. PETITION FOR FINAL ACCOUNTING/DISCHARGE FILED ( ) 33
( ) Yes 1
( ) No 2 (skip to Q. 166)
( ) Unsure 8

159-161. DATE FINAL ACCOUNTING/DISCHARGE FILED
159. Month_____ ( ) ( ) 34-35
160. Day_____ ( ) ( ) 36-37
161. Year_____ ( ) ( ) 38-39

162. COURT ACTION ON FINAL ACCOUNTING/DISCHARGE ( ) 40
( ) Approved 1
( ) Denied 2
( ) Never Ruled 3
( ) Objections filed, new accounting filed 4
( ) Unsure 8

163-165. DATE COURT APPROVED FINAL ACCOUNTING/DISCHARGE
163. Month_____ ( ) ( ) 41-42
164. Day_____ ( ) ( ) 43-44
165. Year_____ ( ) ( ) 45-46

166. WAS FINAL INVENTORY FILED ( ) 47
( ) Yes 1
( ) No 2 (skip to Q. 171)
( ) Unsure 8

167-169. DATE FINAL INVENTORY FILED
167. Month_____ ( ) ( ) 48-49
168. Day_____ ( ) ( ) 50-51
169. Year_____ ( ) ( ) 52-53

170. TOTAL CASH VALUE LISTED ON FINAL INVENTORY
( ) ( ) ,( ) ( ) ( ) ,( ) ( ) ( ) 54-61

171. FINAL DISPOSITION ORDERED ( ) 62
( ) Yes 1
( ) No 2
( ) Unsure 8

STAGE FIVE: ARCHIVAL MATERIALS

Card Number 07
Columns

172. PRESIDING JUDGE, INITIAL HEARING ( ) 9
_____(post code)

173. AGE OF CONSERVATEE/WARD AT TIME OF INITIAL PETITION
_____(actual age) ( ) ( ) ( ) 10-12

174. SEX OF CONSERVATEE/WARD ( ) 13
( ) Male 1
( ) Female 2
( ) Unsure 8

175. ADDRESS OF CONSERVATEE (census track)
_____ ( ) ( ) ( ) 14-16

176. LIVING ARRANGEMENTS OF CONSERVATEE/WARD ( ) ( ) 17-18
( ) Nursing Home 1
( ) Board and Care Home 2
( ) Retirement Facility (e.g., 236 housing) 3
( ) Private Home (unaided) 4
( ) Private Home (aided) 5
( ) Relatives Home 6
( ) Apartment 7
( ) Unsure 8
( ) Trailer 9
( ) Post code _____ 10-99

177. CONSERVATEE/WARD VOLUNTARILY REQUESTED APPOINTMENT ( ) 19
( ) Yes 1
( ) No 2
( ) Unsure 8

178. DID CONSERVATEE/WARD ATTEND THE HEARING ( ) 20
( ) Yes 1
( ) No 2
( ) Unsure 8

179. IS SPOUSE OF PROPOSED CONSERVATEE UNDER PROBATE ( ) 21
( ) Yes 1
( ) No 2
( ) Unsure 8

180. WAS 90 DAY INVENTORY FILED ( ).22
( ) Yes 1
( ) No 2 (skip to Q. 185)
( ) Unsure 8

181-183. DATE FIRST (90 DAY) INVENTORY FILED
181. Month_____ ( ) ( ) 23-24
182. Day_____ ( ) ( ) 25-26
183. Year_____ ( ) ( ) 27-28

184. TOTAL CASH VALUE LISTED ON FIRST INVENTORY
( ) ( ) ,( ) ( ) ( ) ,( ) ( ) ( ) 29-36

185. MEDICAL REPORT FILED ( ) 37
( ) Yes 1
( ) No 2 (skip to Q. 196)
( ) Unsure 8

186-195. SUMMARY OF MEDICAL REPORT

PHYSICAL PROBLEMS

186. First:_____ ( ) ( ) 38-39
187. Second:_____ ( ) ( ) 40-41
188. Third:_____ ( ) ( ) 42-43
189. Fourth:_____ ( ) ( ) 44-45
190. Fifth:_____ ( ) ( ) 46-47

MENTAL PROBLEMS

191. First:_____ ( ) ( ) 48-49
192. Second:_____ ( ) ( ) 50-51
193. Third:_____ ( ) ( ) 52-53
194. Fourth:_____ ( ) ( ) 54-55
195. Fifth:_____ ( ) ( ) 56-57

196. DID A PHYSICIAN TESTIFY AT HEARING ( ) 58
( ) Yes 1
( ) No 2
( ) Unsure 8

197. DID A PSYCHIATRISTS TESTIFY AT HEARING ( ) 59
( ) Yes 1
( ) No 2
( ) Unsure 8

198. CONSERVATEE/WARD UNDER AN LPS CONSERVATORSHIP ( ) 60
( ) Yes 1
( ) No 2 (skip to 203)
( ) Unsure 8

199-201. DATE WHICH LPS FIRST ESTABLISHED

199. Month_____ ( ) ( ) 61-62
200. Day_____ ( ) ( ) 63-64
201. Year_____ ( ) ( ) 65-66

202. NAME OF LOCKED FACILITY (post code) ( ) ( ) 67-68

_____

Card Number 08
Columns

203. COURT INVESTIGATOR APPOINTED ( ) 9
( ) Yes 1
( ) No 2 (skip to Q. 219)
( ) Unsure 8

204-213. SUMMARY OF INVESTIGATOR'S REPORT

FINDINGS

204. First:_____ ( ) ( ) 10-11
205. Second:_____ ( ) ( ) 12-13
206. Third:_____ ( ) ( ) 14-15
207. Fourth:_____ ( ) ( ) 16-17
208. Fifth:_____ ( ) ( ) 18-19

RECOMMENDATIONS

209. First:_____ ( ) ( ) 20-21
210. Second:_____ ( ) ( ) 22-23
211. Third:_____ ( ) ( ) 24-25
212. Fourth:_____ ( ) ( ) 26-27
213. Fifth:_____ ( ) ( ) 28-29

214. IF MORE THAN ONE INVESTIGATIVE REPORT FILED, HAVE CHANGES BEEN SUBSTANTIAL ( ) 30

( ) Yes 1
( ) No 2 (skip to Q. 219)
( ) Unsure 8

215-216. WHAT ARE NEW FINDINGS (post code)

215. First:_____ ( ) ( ) 31-32
216. Second:_____ ( ) ( ) 33-34

217-218. WHAT ARE NEW RECOMMENDATIONS (post code)

217. First:_____ ( ) ( ) 35-36
218. Second:_____ ( ) ( ) 37-38

219. TOTAL NUMBER OF RELATIVES CONTACTED IN PETITION

Actual Number_____ ( ) ( ) 39-40

220-239. FAMILY OF PROPOSED CONSERVATEE (post code)

220. Relationship_____ ( ) ( ) 41-42
Sex_____ ( ) 43
Role_____ ( ) ( ) 44-45
Residence_____ ( ) ( ) ( ) 46-48

(NOTE QUESTION 221-239 ARE THE SAME AS QUESTION 220).