Criteria for Placing Older Adults in Public Conservatorship: Age as Proxy for Need

Sandra L. Reynolds, PhD

Conservatorship (called guardianship in some states) is an intrusive service that has been extensively criticized on several grounds. First, conservatorship typically involves the involuntary appointment of a surrogate decision maker for an adult, essentially reducing the adult to the legal status of a minor (Alexander, 1977, 1979, 1990; Horstman, 1975; Kapp, 1992; Rein, 1992). Second, older adults are often thought to be inappropriately subject to conservatorship and to experience disproportionately negative outcomes from conservatorship (Buchanan & Brock, 1986; Culver & Gert, 1990; Iris, 1988, 1990; Johnson, 1990; Keith & Wacker, 1994). Finally, the judicial oversight of conservatorship is criticized as insufficient because courts are understaffed and underfunded (Coleman & Dooley, 1990; Iris, 1988, 1990; Keith & Wacker, 1992; Schmidt, 1996; Schmidt, Miller, Bell, & New, 1981).

Underlying these criticisms is the assumption that, at best, conservatorship is an example of compassionate ageism (Binstock, 1985); at worst, it is a potentially negative mechanism of social control (Schmidt, 1996; Williamson, Shindul, & Evans, 1985). Empirical studies examining either ageism or social control in conservatorship practice are lacking, however, as most studies of conservatorship have debated the appropriate standards of decision-making capacity (Anderer, 1990; Appelbaum & Grisso, 1988; Collopy, 1988; Crystal & Dejowski, 1987; Jecker, 1990; Kapp, 1990, 1991, 1992, 1996; Sabatino, 1996), alternative services such as advance directives or daily money management (High, 1993; Hommel & Wang, 1990; Wilber, 1991; Wilber & Buturain, 1993; Wilber & Reynolds, 1995), or consisted of studies abstracted from court files (Bulcroft, Kielkopf, & Tripp, 1991; Friedman & Savage, 1988; Stevenson & Capezuti, 1991 [often employing small sample sizes], and Keith & Wacker, 1994).

Several descriptive studies of conservatees have been conducted. Findings indicated that the average age of conservatees ranged between 76 and 81, and that the typical conservatee was female (Associated Press [AP], 1987; Bulcroft et al., 1991; Friedman & Savage, 1988; Keith & Wacker, 1992; Schmidt, 1996; Schmidt, Miller, Bell, & New, 1981). The study by Keith and Wacker (1994) found a large number with low to moderate income (71% of conservatees had less than $10,000). The majority of conservatees were living in a nursing home or hospital — from 64% (AP, 1987) to 89% (Friedman & Savage, 1988) — and estimates of the incidence of dementia ranged from 16% (AP, 1987) to 60% (Stevenson & Capezuti, 1991). In two studies, the average estate size of approximately $50,000 (AP, 1987; Bulcroft et al., 1991) indicates moderate wealth, whereas another study focusing on family conservators (Keith & Wacker, 1994) found a large number with low to moderate income (71% of conservatees had less than $10,000). The majority of conservatees were living in a nursing home or hospital — from 64% (AP, 1987) to 89% (Friedman & Savage, 1988) — and estimates of the incidence of dementia ranged from 16% (AP, 1987) to 60% (Stevenson & Capezuti, 1991). In addition, the study by Keith and Wacker (1994) included information on services provided to conservatees, concluding that living arrangements — specifically, living alone — were positively correlated with the number of services received from the conservator. Few of these studies have included nonelderly conservatees, and none have analyzed or compared differential experiences or characteristics of older and younger conservatees.

None of these studies have focused on public conservatees, who are likely to be among the least

---

1This research was supported in part by a grant from the John Randolph Haynes and Dora Haynes Foundation of Los Angeles, CA and also supported by NIA Multidisciplinary Research in Aging Grant ST32 A00037-19. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of view or opinions do not therefore necessarily represent official National Institute on Aging policy. The author thanks Kathleen H. Wilber, Eileen M. Crimmins, Jean Shelton, and two anonymous reviewers for their comments on earlier versions of this article. Portions of this article were previously presented at the Annual Scientific Meeting of The Gerontological Society of America in November 1995 in Los Angeles and the American Society on Aging Annual Meeting in March 1996 in Anaheim, CA.

2Address correspondence to Sandra L. Reynolds, PhD, Assistant Professor, Department of Gerontology, University of South Florida, 4202 E. Fowler Ave., SOC107, Tampa, FL 33620-8100, or e-mail sreynold@luna.cas.usf.edu.
affluent and most socially isolated of the population. Public conservatorship (guardianship) is a public intervention that provides the services of a surrogate decision maker for those adults who lack appropriate family, friends, or professional assistance. Studies of public guardianship are rare; the most recognized studies have been by Steinberg (1985) on the Los Angeles County Office of Public Guardian, and the other by Schmidt and colleagues (Schmidt, Miller, Bell, & New, 1981) on public guardian programs in five states. Although both studies contain some information on conservatees, the purpose of each study was very different from the present study. The Steinberg study was conducted to examine service availability in the community, whereas Schmidt et al. wanted to recommend a model public guardian statute. This study is the first to examine in detail the characteristics of public conservatees and conservatorship as a public intervention.

Despite the paucity of empirical studies of public or private conservatorship, legal and gerontological literature tends to assume that conservatorship is imposed unfairly on older adults. Building on Neugarten's (1982) model of service allocation on the basis of age or need, this study examines California's conservatorship practice, as California mandates the use of need-based criteria in placing adults under conservatorship. Although the actual definitions of criteria vary in all 50 states, since 1977 California has shared 34 other states' implicit rejection of advanced age as a criterion (Cal. Adv. Legis. Serv., 1976). The statutes in California, thus, can be considered reasonably representative of other states' criteria, and in some quarters are viewed as an exemplar of enlightened reform (Wilber, 1996). In addition, the Los Angeles County public guardianship program was chosen for analysis as it is a large and complex sample of public conservatees, presenting a unique opportunity to analyze age-related differences among public conservatees. Any results contained in this study, and implications drawn therefrom, should be construed to apply to public conservatees only; inferences should not necessarily be drawn to conservatees served by private individuals or companies.

Definitions and Background

The Los Angeles County Office of Public Guardian (LAOPG) provides the services of a public guardian for two types of adults who have neither family nor friends willing or able to fill the role of conservator (in California, although the service is termed conservatorship, the public provider is the public guardian). Lanterman-Petris-Short (LPS) conservatorship provides decision-making services to adults who enter the system through civil commitment procedures. LPS provides short-term, but relatively global, assistance to persons with mental illness under the state's police powers (protection of society) and parens patriae powers (protection of the person by the state; Kapp, 1992; Rein, 1992; Sabatino, 1996). The California statutes define the need for LPS conservatorship to be for adults who are "gravely disabled" by mental illness, such that they are unable to determine or cooperate with treatment necessary to maintain their personal safety and the safety of society (A. Bill, 1990).

For Probate conservatorship, a need-based definition is found in the California Probate Code (1994), §1801a: "... a conservator of the person may be appointed for a person who is unable properly to provide for his or her personal needs..." and §1801b: "... a conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources...." (West Publishing Co., 1994). Although California and 34 other states no longer use "advanced age" as a criterion for conservatorship, 15 states still do (Anderer, 1990). The Neugarten model anticipates two reasons why using age as a criterion for allocating services to elderly persons may be risky: (a) Policies for older adults are perceived to exist at the expense of the needy young (Neugarten, 1982; Preston, 1984), and (b) old-age policies themselves will further marginalize needy older adults, creating a climate that promotes age discrimination (Neugarten, 1982).

Although California's criteria for conservatorship include need, and not age, California law requires a demonstration of need to place an adult in Probate conservatorship. Adults enter Probate conservatorship through the process of a petition in which evidence of inability to manage personal or financial affairs is presented to the court and verified by a court investigator; subsequently, a ruling on the petition is entered by the Probate Court judge. Thus, for LPS and Probate conservatorship, California lawmakers have defined need as being gravely disabled, a danger to self or others, or unable to manage one's affairs; age is implicitly excluded in California since the 1977 change in the Probate Code.

Methods

Goals and Hypotheses

The goal of this study was to examine characteristics of public LPS and Probate conservatees to determine the extent to which assignment of adults into the two programs is age-blind. This question can be viewed in two ways: (a) the amount of time LAOPG staff spent investigating proposed conservatees' appropriateness for conservatorship, and (b) the criteria used to determine the program into which they are assigned.

In keeping with the legislative mandate that impaired adults be served under the least restrictive alternative, each adult referred for public conservatorship undergoes an investigation, during which the LAOPG staff must determine whether conservatorship is an appropriate service. To the extent that this process contains ageism (i.e., is not age-blind) the amount of time that LAOPG staff spends investigating the proposed conservatee should vary with age. Evidence of such ageism is suggested when the
LAOPG staff assumes that older adults are less likely to be able to care for themselves, resulting in more time attempting to find documentation for evidence of such incapacity. On the other hand, if LAOPG staff assumes that old age is sufficient evidence of incapacity, regardless of legislative definition, less time might be spent investigating. To the extent that the process is age-blind, age should not be a factor associated with the time spent in the investigatory phase. Thus, the first hypothesis suggests that, if ageism enters into the process of determining whether an adult appropriately belongs in conservatorship, then age will be associated with the amount of time spent investigating.

The second major question this article addresses is the criteria used to assign adults into LPS versus Probate conservatorship. Rather than age, the need of the adult — as indicated by “gravely disabled” or “unable to manage” — should be the determinant of assignment into one program rather than the other. The second hypothesis thus states that, if ageism enters into the process of assignment into conservatorship, then increasing age will be a significant factor associated with being in Probate conservatorship, with etiological factors controlled.

Procedures

This article reports on a cross-sectional study of public conservatees in Los Angeles County using data drawn in July 1993. The dataset, obtained from the Los Angeles County Public Guardian’s Management Information System (MIS), provides information on demographic characteristics, physical and mental health, financial status, behavioral problems, and access to family and friends. The analyzed sample of 589 is compared with the full 2,151 study population in Table 1, with the results substantively unaffected by missing data. Differences can be found between the full and analyzed samples on marital status, median assets; the same could be assumed with verifying the contact and the time spent. The amount of time spent investigating ranged from one hour to over 800 hours, with 16.7 hours as the average. LPS and Probate cases are assigned randomly to all case managers, resulting in a total of 589 complete records. Missing information resulted from the lack of financial data, social network information, and some measures of health and behavior. With incomplete records removed, the first hypothesis (described later) is tested on a sample of 374 and the second hypothesis is tested on 589 cases, the difference being missing data in the first dependent variable. The analyzed sample of 589 is compared with the full 2,151 study population in Table 1, with the results substantively unaffected by missing data. Differences can be found between the full and analyzed samples on marital status, median assets, whether the person is a danger to others, and the proportion of those diagnosed with mental retardation.

Measures

Dependent Variables. — The first hypothesis examines the time LAOPG staff spent investigating the proposed conservatee. The dependent variable is measured as the number of hours of time spent by LAOPG on an individual case prior to the date of appointment. When an individual is referred to LAOPG, the investigatory process begins, during which information on the adult’s physical, mental, financial, and social situation is developed prior to the hearing on the petition to appoint a conservator. During this time, the investigating staff record the amount of time spent on the case by the mechanism of a narrative entry into the client file that documents the nature of the contact and the time spent. The amount of time spent investigating ranged from one hour to over 800 hours, with 16.7 hours as the average. LPS and Probate conservatees to be older. To isolate the effect of age from the program type, age and program type were combined into a succession of dichotomous variables: Old Probate, Young Probate, and Old LPS, with Old defined as 60+ years, and Young LPS as the omitted category for each variable.

Gerontological literature suggests that those requiring conservatorship are likely to be White widowed females (AP, 1987; Flemming & Dejowski, 1982; Friedman & Savage, 1988; U.S. House of Representatives Select Committee on Aging, 1987). Because the literature also suggests that increasing age is a factor, gender, race/ethnicity, and marital status were included to separate them from the effects of age. Wealth and income were included as they, too, may influence the time LAOPG staff spent investigating. If, for example, one proposed conservatee owned more assets than another, it would take LAOPG more time to verify the value of such assets; the same could be assumed with verifying higher levels of income. The variable, wealth, represents the value of the inventory of the estate that was on file with the Probate Court. Income is an annual figure that was constructed from a monthly income balance sheet, with monthly income figures (such as Social Security payments) annualized. Both income and wealth are continuous measures and both have been scaled for clarity, income being divided by 1,000 and wealth by 10,000.

Psychiatric diagnoses were coded into five groups: dementia/organic brain syndrome, mental retardation, bipolar disorder, other psychoses, and schizophrenia, with schizophrenia as the omitted category.
LAOPG staff indicated that adults displaying evidence of schizophrenia (such as hallucinations) were more easily identifiable than adults suffering from dementia (less likely to present overt symptoms), thus requiring less investigation. Presenting and dangerous behaviors also were included to account for the ease with which they are recognized, thus suggesting less need for investigation. Presenting behaviors consisted of whether the adult had a history or current incidence of suicide attempts, homicide, assault, or hostility. Dangerous behaviors included whether the adult had a history of criminal charges, any criminal charges pending, or whether he or she was a danger to others.

Finally, physical and psychotic impairments were included to control for severity of impairment. The measure used for physical impairment was the number of activity of daily living (ADL) impairments (range 0–5). For psychotic impairment, a dichotomous variable was used to indicate whether the person was oriented to time and place. Physical and psychotic impairments are recorded by LAOPG staff in several ways — during the investigative stage, by periodic observation, and by report from staff in residential facilities. With physical and psychotic impairments, the assumption would be that less investigative time would be required for a higher level of impairment.

Many of the same factors that influence the time spent investigating also can be expected to affect an adult’s need for conservatorship, the focus of the second hypothesis. For example, the same demographic variables — gender, race/ethnicity, and marital status — must be included to account for the likelihood of White female widows to be assigned to conservatorship. In this case, marital status was coded in a manner different from that usually seen in research on aging. Typically, studies of older persons use “married” as the variable of interest, or perhaps “widowed.” Within this study population, however, the most prevalent category by far is “single,” which is the omitted category. Largely for the sake of parsimony, marital status was divided into two dichotomous variables called “married” and “disrupted marriage,” which includes “separated,” “divorced,” and “widowed.” Wealth and income also are included in the model as indications of need for conservatorship, particularly to control for having financial affairs that one might not be able to manage, one of the statutory criteria for Probate conservatorship.

Finally, the two need variables are included — “gravely disabled” and “unable to manage.” The legislative criteria for LPS (gravely disabled by mental illness, or a danger to self or others) were defined to include conservatees who were: (a) cur-

### Table 1. Description of the Full Sample and the Analyzed Sample

<table>
<thead>
<tr>
<th>Variables</th>
<th>Full Sample (N = 2,151)</th>
<th>Analyzed Sample (n = 589)</th>
<th>LPS (n = 440)</th>
<th>Probate (n = 189)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigative hours</td>
<td>12.57</td>
<td>16.72</td>
<td>11.88</td>
<td>22.67</td>
</tr>
<tr>
<td>LPS/probate</td>
<td>74/26</td>
<td>75/25</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Mean age</td>
<td>56.5</td>
<td>57.14</td>
<td>52.48</td>
<td>70.91</td>
</tr>
<tr>
<td>Males/females</td>
<td>55/45</td>
<td>56/44</td>
<td>52/48</td>
<td>38/62</td>
</tr>
<tr>
<td>% married</td>
<td>4.7</td>
<td>3.9</td>
<td>2.7</td>
<td>7.4</td>
</tr>
<tr>
<td>% former married</td>
<td>16.8</td>
<td>18.5</td>
<td>19.3</td>
<td>16.1</td>
</tr>
<tr>
<td>% single</td>
<td>59.2</td>
<td>65.4</td>
<td>68.6</td>
<td>53.7</td>
</tr>
<tr>
<td>% other marital status</td>
<td>19.3</td>
<td>12.2</td>
<td>9.4</td>
<td>20.8</td>
</tr>
<tr>
<td>% White</td>
<td>64.7</td>
<td>66.9</td>
<td>64.5</td>
<td>73.8</td>
</tr>
<tr>
<td>% Black</td>
<td>19.9</td>
<td>19.5</td>
<td>21.4</td>
<td>14.1</td>
</tr>
<tr>
<td>% Latino</td>
<td>8.7</td>
<td>8.8</td>
<td>9.3</td>
<td>4.7</td>
</tr>
<tr>
<td>% other races</td>
<td>6.7</td>
<td>4.8</td>
<td>4.8</td>
<td>4.7</td>
</tr>
<tr>
<td>Average education (years)</td>
<td>11.17</td>
<td>11.12</td>
<td>11.18</td>
<td>10.92</td>
</tr>
<tr>
<td>Median income ($)</td>
<td>7,236</td>
<td>7,236</td>
<td>7,236</td>
<td>7,272</td>
</tr>
<tr>
<td>Median assets ($)</td>
<td>11,630</td>
<td>6,048</td>
<td>3,263</td>
<td>25,833</td>
</tr>
<tr>
<td>% suicidal*</td>
<td>1.8</td>
<td>1.9</td>
<td>2.5</td>
<td>0.1</td>
</tr>
<tr>
<td>% homicidal*</td>
<td>0.3</td>
<td>0.3</td>
<td>0.5</td>
<td>0.1</td>
</tr>
<tr>
<td>% dangerous*</td>
<td>12.9</td>
<td>22.1</td>
<td>28.4</td>
<td>3.4</td>
</tr>
<tr>
<td>% duty to warn*</td>
<td>15.9</td>
<td>16.0</td>
<td>20.2</td>
<td>3.4</td>
</tr>
<tr>
<td>% withdrawn*</td>
<td>54.0</td>
<td>55.9</td>
<td>59.5</td>
<td>45.0</td>
</tr>
<tr>
<td>% not oriented*</td>
<td>48.6</td>
<td>49.2</td>
<td>52.7</td>
<td>38.9</td>
</tr>
<tr>
<td>% dementia/OBS*</td>
<td>22.5</td>
<td>23.8</td>
<td>18.4</td>
<td>39.6</td>
</tr>
<tr>
<td>% schizophrenic*</td>
<td>54.6</td>
<td>59.9</td>
<td>70.5</td>
<td>28.9</td>
</tr>
<tr>
<td>% mental retardation*</td>
<td>9.6</td>
<td>5.9</td>
<td>0.5</td>
<td>22.1</td>
</tr>
<tr>
<td>% wanderers*</td>
<td>40.2</td>
<td>44.3</td>
<td>51.4</td>
<td>23.5</td>
</tr>
<tr>
<td>% with &lt;2 in social network*</td>
<td>47.6</td>
<td>46.7</td>
<td>45.5</td>
<td>50.3</td>
</tr>
<tr>
<td>% with no ADLs*</td>
<td>36.0</td>
<td>29.5</td>
<td>28.0</td>
<td>34.2</td>
</tr>
<tr>
<td>% with 3+ ADLs*</td>
<td>34.0</td>
<td>37.9</td>
<td>35.5</td>
<td>45.0</td>
</tr>
</tbody>
</table>

Notes: LPS = Lanterman-Petris-Short conservatorship. ADLs = activities of daily living. OBS = organic brain syndrome.
*Percentages do not add up to 100 as variables are mutually exclusive.
rently suicidal or homicidal (danger to self or others), (b) coded as being a danger to others, (c) not oriented to time and place (gravely disabled), or (d) coded such that the LAOPG had a duty to warn someone in the event the conservatee went AWOL (danger to others).

In contrast, although California law states that a Probate conservator shall be appointed if a person is unable to manage his or her personal or financial affairs, there is little guidance in the statutes to indicate what the legislature intended by “unable to manage.” Based on the literature, several factors were used to approximate the individual’s need for Probate conservatorship. Individual ability to manage one’s personal or financial affairs, or to make and execute independent decisions (Appelbaum & Grisso, 1988; Collopy; 1988), results from an interacting role between the person’s level of cognitive and physical impairments, personal skills and experience, and availability and competence of the informal social network (Anderer, 1990; Bengtson & Kuypers, 1986; Kapp, 1991, 1992; Sabatino, 1996). Employing this conceptual framework, “unable to manage” was defined as any conservatee who had deficiencies in all three areas. Physical or cognitive impairments were defined as the presence of any inability to perform activities of daily living without assistance, a history of wandering, or a diagnosis of dementia/OBS or mental retardation. Lack of skills and experience were defined by using a low level of education — less than 9 years — as a proxy measure. Deficiency in the informal social network was defined as those conservatees with one person or less in their personal network. Because “unable to manage” is not defined clearly in the statutes, this operationalization was constructed with the intent to err on the side of inclusion.

Gravely disabled and unable to manage are, thus, the operational definitions of the State’s legislative intent to use need as the defining criteria for conservatorship. The second hypothesis implies that older adults whose needs indicate LPS conservatorship would nevertheless be assigned into Probate conservatorship.

The Sample

The total study population consisted of 2,151 adults ranging in age from 18 to 103 (average age was 56.5), and differed little from the samples used to test either hypothesis (Table 1). Men outnumbered women by 55% to 45%, and the most predominant marital status category was single (59%). Compared with 1990 Census data on the Los Angeles County population, conservatees were disproportionately White (65%) or Black (20%), whereas Latinos (9%) and other races (9%, primarily Asian) were underrepresented. If conservatorship is a mechanism of social control, then the underrepresentation of Latinos and Asians in the sample of public conservatees may well be an expression of the widely held, although not conclusive, assumption that Latino and Asian families are better able to care for their older adults. Among those conservatees about whom financial data existed (n = 1,475), the median income was $7,236, and the median value of the estate was $11,630.

Although approximately 36% conservatees had no ADL impairments, 34% had difficulties with three or more ADLs. ADL impairments were defined as inability to toilet, bathe, dress, feed, or transfer to a bed or chair without help or equipment. Conservatees were characterized by diagnoses of schizophrenia (55%), dementia/OBS (23%), mental retardation (10%), bipolar disorder, and other psychoses (6% and 5% respectively, not shown).

Most of the conservatees displayed at least one type of behavioral disorder. For example, 72% of the conservatees had at least one of the presenting behaviors, with history of hostility and assault (63% and 52%, not shown) most often cited, and suicide and homicide the least often cited. Many also exhibited dangerous behaviors, with 13% listed as being a danger to others, and 16% for whom the LAOPG had a duty to warn someone, should the conservatee go AWOL. Forty percent were identified as being wanderers, and 49% were not oriented to time and place.

The analyzed sample (n = 589) was remarkably similar to the full sample, with the average age 57, male/female ratio of 56/44, slight differences in marital status, and substantial similarities in race/ethnicity (Table 1). Income data were nearly identical, but the analyzed sample had a much lower level of assets. With few exceptions (the percent who were considered dangerous to others, and the percent diagnosed with mental retardation), physical, mental, and functional characteristics of the analyzed sample matched the full sample reasonably well.

Data Analysis

As the dependent variable in the first hypothesis is continuous, ordinary least squares (OLS) regression was run on the model of time spent investigating the adult for conservatorship. The dependent variable in the second hypothesis is dichotomous, so logistic regression was used to analyze the probability of an adult being assigned to LPS or Probate. Marginal effects and odds ratios were calculated to determine how much relative impact each independent variable had on the relevant dependent variable. The independent variables also were tested for multicollinearity, with results consistently at low levels (none above .40).

Results

Age and Time Spent Investigating

Table 2 presents the results of the OLS regression on the factors associated with the amount of time spent investigating the subject for conservatorship. Age does not appear to be relevant; examining the age/program type variables (Young LPS is omitted), both Young and Old Probate conservatees require
Table 2. Ordinary Least Squares Regression Results of Factors Associated With the Amount of Time Spent Investigating the Appropriateness of Conservatorship (N = 374)

<table>
<thead>
<tr>
<th>Model IV</th>
<th>b</th>
<th>Standard Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Old probates</td>
<td>1.945**</td>
<td>0.7206</td>
</tr>
<tr>
<td>Old LPSs</td>
<td>0.301</td>
<td>0.6358</td>
</tr>
<tr>
<td>Young probates</td>
<td>2.864**</td>
<td>0.9466</td>
</tr>
</tbody>
</table>

Demographics:
- Gender: -0.310, 0.4356
- Black*: -1.408*, 0.5622
- Latino*: 0.738, 0.9594
- Other races*: -0.658, 0.9168
- Divorced*: -0.654, 0.5816
- Separated*: -1.921, 1.5612
- Married*: -0.207, 0.8057
- Widowed*: 1.045, 0.5434
- Wealth/$10,000: -0.000, 0.2775
- Income/$1,000: 0.000, 0.0496

Diagnoses:
- Dementia/OBS*: 0.162, 0.6187
- Other psychoses*: 1.116, 0.8261
- Bipolar*: 1.328, 0.8619
- Mental retardation*: 1.972*, 0.7817

Behaviors:
- Any presenting behavior: -0.513, 0.4734
- Any dangerous behavior: 1.316*, 0.6490
- Number of ADL impairments: -0.526***, 0.1300
- Not oriented: 0.760, 0.7604

Notes: \( R^2 = .2085 \). OBS = Organic brain syndrome. ADL = activity of daily living. b = Unstandardized regression coefficient.
- *White is omitted.
- *Single is omitted.
- *Schizophrenia is omitted.
- *p < .05; **p < .01; ***p < .001.

far more investigatory time than Young LPS conservatees. Old Probate conservatees, for example, require an average of 2 more hours of investigation than Young LPS conservatees. Young Probate conservatees require even more time, an average of nearly 3 hours more compared with young LPS conservatees. There is no difference in investigatory time for old and young LPS conservatees. Comparison of coefficients indicates that there was no significant difference in investigatory time for old and young Probate conservatees. In a separate model, age was used as a continuous variable, with program type dichotomous; in this case, program type was significant (p < .001), while age was not. In addition, an analysis of covariance (ANCOVA) was run using age as a continuous variable, program type as a dichotomous variable, and an interactive term for age and program type. In both cases, program type was significant whereas neither age nor the interactive term was significant.

Among the demographic variables, only race was associated with differential amounts of time spent investigating. Compared with Whites, Blacks were investigated an average of nearly 1.5 hours less. Among the diagnoses, those with mental retardation required nearly 2 more hours of investigation than those with a diagnosis of schizophrenia. The presenting behaviors were not significantly related to the amount of time spent investigating, but the dangerous behaviors were. Finally, having more ADL impairments was associated with approximately one-half hour less investigation on average than for those with fewer ADL impairments. Gender was not significantly related to investigatory time spent, and although it would be interesting also to examine whether there were differences based on the demographic characteristics of the LAOPG staff, such data were not available.

Age or Need — Assignment Into LPS or Probate

Table 3 presents the results of logistic regression on factors associated with assignment into LPS or Probate. As the central question is the role of age on assignment into LPS or Probate, Model I begins by regressing age against the probability of being in LPS or Probate. Being older significantly increased the probability of being in Probate by one percentage point per year (the marginal effect was .0125). The relative likelihood of a person being assigned to Probate was 7% greater for a person one year older (odds ratio of 1.069).

If the process of assignment into conservatorship is age-blind, the effect of age should diminish as other variables that influence assignment into LPS or Probate are introduced. Model II added in the rest of the demographic factors, including income and wealth, to determine whether demographic or financial factors would dilute the effect of age. The effect of age was almost unchanged by the addition of these demographic controls. Gender, marital status, race/ethnicity, and wealth were not significant factors. In contrast to wealth, increasing levels of annual income increased the probability of being in Probate by one percentage point per $1,000 in annual income (the relative likelihood increased by 7% per $1,000).

In Model III the two need variables, gravely disabled and unable to manage, were included. If the conservatorship process was age-blind, age should disappear as a significant factor, leaving only the need factors as significant variables. This was partly the case with the criteria for LPS conservatorship, as gravely disabled was highly significant, although age remained significant also. A gravely disabled adult had 27 percentage points lower probability of being in Probate conservatorship, with all other factors controlled. The relative likelihood of a gravely disabled person being in Probate was 24% that of a non-gravely disabled person. In contrast, the need factor for Probate conservatorship, unable to manage, was not significant. Meanwhile, increasing age remained a highly significant factor, with each year more of age still predicting nearly one percentage point greater probability of being in Probate (relative likelihood of a person one year older being in Probate was higher by 7%). Higher levels of income also continued to be associated with Probate conservatorship.
between those of unequal power, it is hard to picture the conservatorship literature; unfortunately, such a study is outside the scope of this article. Rather, program type, psychiatric diagnosis, behavior, physical impairment, and ethnicity were significant factors associated with the time spent investigating. Thus, it appears that there is little evidence to be found for ageism in the investigatory process. This finding is particularly encouraging if we look upon conservatorship as an exercise in social control. If social control, in the form of public interventions such as conservatorship, is the result of power struggles between those of unequal power, it is hard to picture more unequal parties than those of the legal, judiciary system, and the adult with mental illness or cognitive impairment (Handler, 1990; Williamson et al., 1985). In contrast, behavioral indicators play a larger role in the determination of need for conservatorship, thus presenting the judicial system with a mechanism to turn “social dynamite” into “social junk” (Williamson et al., 1985, p. 27). In terms of “social dynamite,” it is somewhat natural that the presenting (suicide, homicide) and dangerous (danger to others, duty to warn) behaviors represent a more compelling and immediate problem to society than the sometimes nebulous status of an impaired but nonpsychotic adult (i.e., one with dementia). The expectation, thus, is that such behaviors will be both easier to recognize and more amenable to quick intervention, lessening the time spent investigating. One of the more interesting findings in this model is that the presenting behaviors were not significant, but dangerous behaviors were. These findings may be explained by considering the nature of the behavior. When an adult is presented to LAOPG following a police arrest for assault (a presenting behavior), presumably the evidence — for LAOPG, not legal evidence — is fairly clear. The dangerous behaviors, however, consist of such things as criminal charges pending, whether the person is a danger to others, or whether LAOPG would have a duty to warn someone if the adult went AWOL. These behaviors might conceivably require more effort on the part of LAOPG staff to verify.

Also surprising was the significance of ADL impairments an adult had, the clearer it was that they

### Table 3. Logistic Regression Predicting the Probability of Factors Associated With Assignment Into Probate (1) or LPS (0); Unstandardized Coefficients (n = 589)

<table>
<thead>
<tr>
<th></th>
<th>Model I</th>
<th>Model II</th>
<th>Model III</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>.0664***</td>
<td>.0645***</td>
<td>.0717***</td>
</tr>
<tr>
<td></td>
<td>[.0125] (1.069)</td>
<td>[.0122] (1.067)</td>
<td>[.0135] (1.074)</td>
</tr>
<tr>
<td>Demographics</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gender</td>
<td>.3744</td>
<td>.0708 (1.454)</td>
<td>.2476</td>
</tr>
<tr>
<td>Disrupted marriagea</td>
<td>-.1720</td>
<td>-.0325 (0.842)</td>
<td>-.2337</td>
</tr>
<tr>
<td>Marrieda</td>
<td>.5205</td>
<td>.0984 (1.683)</td>
<td>.6136</td>
</tr>
<tr>
<td>Blacka</td>
<td>-.0689</td>
<td>-.0130 (0.933)</td>
<td>-.1410</td>
</tr>
<tr>
<td>Latinoa</td>
<td>.0430</td>
<td>.0081 (1.044)</td>
<td>.0706</td>
</tr>
<tr>
<td>Other racesb</td>
<td>-.0125</td>
<td>-.0024 (0.988)</td>
<td>.0101</td>
</tr>
<tr>
<td>Independence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income/$1,000</td>
<td>.0718**</td>
<td>.0136 (1.074)</td>
<td>.0490*</td>
</tr>
<tr>
<td>Wealth/$10,000</td>
<td>-.0037</td>
<td>-.0007 (0.996)</td>
<td>-.0028</td>
</tr>
<tr>
<td>Need</td>
<td></td>
<td></td>
<td>-.14192***</td>
</tr>
<tr>
<td>Gravely disabled</td>
<td></td>
<td></td>
<td>-.2682 (0.242)</td>
</tr>
<tr>
<td>Unable to manage</td>
<td></td>
<td></td>
<td>.9489</td>
</tr>
<tr>
<td>–2 Log likelihood</td>
<td></td>
<td></td>
<td>.1793 (2.583)</td>
</tr>
<tr>
<td>Intercept</td>
<td>-.5.1792</td>
<td>-.5.6773</td>
<td>-.5.1991</td>
</tr>
</tbody>
</table>

Notes: Marginal effects in brackets. Odds ratios in parentheses. Predicted probability = .25297. The individual’s marginal effects for continuous variables are calculated using the following formula: βP(1–P), where β is the individual’s value of the independent variables, P is the predicted probability, and the sample marginal effects are the average of the individual marginal effects. For dummy variables, the marginal effects are the sample mean of the difference between the individual’s predicted probability when the independent variable equals 1 vs 0 (Maddala, 1978).

*a Single is omitted.
*b White is omitted.
*p < .05; **p < .01; ***p < .001.

### Discussion

Before discussing the results presented in this article, it is worthwhile to emphasize once again that the study was conducted on public conservatees, and not on conservatees being served by private entities. Conclusions drawn regarding the presence or absence of ageism in the public conservatorship process should not be assumed to apply necessarily to private conservatees. A comparison of private and public conservatees would be a valuable addition to the conservatorship literature; unfortunately, such a study is outside the scope of this article.

The first hypothesis, that evidence of ageism might be found in either more or less investigatory time spent on older public conservatees, is not supported by the findings in this study. Rather, program type, psychiatric diagnosis, behavior, physical impairment, and ethnicity were significant factors associated with the time spent investigating. Thus, it appears that there is little evidence to be found for ageism in the investigatory process. This finding is particularly encouraging if we look upon conservatorship as an exercise in social control. If social control, in the form of public interventions such as conservatorship, is the result of power struggles between those of unequal power, it is hard to picture more unequal parties than those of the legal, judiciary system, and the adult with mental illness or cognitive impairment (Handler, 1990; Williamson et al., 1985). In contrast, behavioral indicators play a larger role in the determination of need for conservatorship, thus presenting the judicial system with a mechanism to turn “social dynamite” into “social junk” (Williamson et al., 1985, p. 27). In terms of “social dynamite,” it is somewhat natural that the presenting (suicide, homicide) and dangerous (danger to others, duty to warn) behaviors represent a more compelling and immediate problem to society than the sometimes nebulous status of an impaired but nonpsychotic adult (i.e., one with dementia). The expectation, thus, is that such behaviors will be both easier to recognize and more amenable to quick intervention, lessening the time spent investigating. One of the more interesting findings in this model is that the presenting behaviors were not significant, but dangerous behaviors were. These findings may be explained by considering the nature of the behavior. When an adult is presented to LAOPG following a police arrest for assault (a presenting behavior), presumably the evidence — for LAOPG, not legal evidence — is fairly clear. The dangerous behaviors, however, consist of such things as criminal charges pending, whether the person is a danger to others, or whether LAOPG would have a duty to warn someone if the adult went AWOL. These behaviors might conceivably require more effort on the part of LAOPG staff to verify.

Also surprising was the significance of ADL impairments in predicting less investigatory time. However, this makes sense when considering the LAOPC’s task, which is to verify the adult’s appropriateness for conservatorship. Presumably, the more ADL impairments an adult had, the clearer it was that they...
would need intervention. Thus, there was less need for investigation.

The second hypothesis, that ageism would be supported if age rather than need drove the assignment of the adult into public LPS or Probate conservatorship, presents a much more complex story. Contrary to implied legislative intent, increasing age was significantly associated with assignment to Probate conservatorship, and although need factors (gravely disabled) were significantly associated with assignment to LPS, the need for Probate (unable to manage) was not a significant factor. The implication is that an older adult with presenting behaviors, or other indicators of need for LPS conservatorship, would be more likely to be in Probate conservatorship, regardless of these needs.

The reasons that this may be so are manifold, and they require further research to confirm. One possibility is that social isolation of older adults may make it more difficult for the community to recognize aberrant behavior in older adults. Another possibility is because of pervasive stereotypes of older adults’ problems as chronic and irreversible (Bengtson & Kuypers, 1986; Kapp, 1992). Although the adult’s behavior may imply civil commitment and conservatorship frequently exists to further third-party concerns, but also is consistent with Schmidt et al.’s (1981) observation that “for every $100,000 in a given estate, a lawyer shows up, for every $25,000 a family member shows up” (p. 109).

The problem is the vague standard of “unable to manage.” As Probate conservatorship is a public intervention contemplated by the parens patriae power (protection of the person by the state), perhaps a better criterion might be “danger to self,” explicitly acknowledging the combination of lack of capacity and personal or financial risk to the older adult (Wilber & Reynolds, 1995). Should the State consider such a standard, however, the problem remains for both the researcher and the wider community. For the researcher, the only good measure of danger to self in the public guardian’s data is history or current incidence of suicide attempts. This is not the type of danger to self that could result in the scenario of the widow not paying her heating bill. For the family, APS worker, or other concerned party, the question of danger to self will almost inevitably involve questions of judgment. However, the legislature might also consider making its definitions more explicit, particularly in identifying personal or financial risk as a context in which danger to self occurs (Wilber & Reynolds, 1995).

Practically speaking, the definition of “unable to manage” may be incomplete or inexact because, although its conceptualization is based on assumptions in the literature, its actual construction is dependent on data recorded when the person becomes a conservatee. In the case of the Probate conservatee, court procedures require documentation of such disability, including a clinical opinion from a physician, but the literature is replete with examples of seemingly inappropriate conservatorship. Given the lack of clear statutory language defining “unable to manage” and the underfunding of county referral and court services, it is understandable that increasing age may be used as a proxy for need associated with Probate conservatorship. Old age may simply be easier for family mem-

Vol. 37, No. 4, 1997 525
bers, clinicians, and judges to recognize than "unable to manage."

The persistence of age as a factor in assignment into Probate conservatorship has important implications for both aging policy and conservatorship reform. In California, LPS conservatorships endure by law for one year only, and must be renewed through a court hearing. Probate conservatorships have no such time limitation, thus presenting the risk that older persons assigned to Probate conservatorship will be placed into a service that does not recognize or meet their needs, for an indefinite period of time. Findings from this study suggest that the process by which adults are assigned to public conservatorship is not age-blind, even though California law suggests that it should be so. Further studies should be conducted to determine whether this finding is the result of attitudes of ageism, compassionate or otherwise, inadequate assessment mechanisms, service gaps in the community, or a combination of all three.

References


Received April 3, 1996
Accepted January 22, 1997

526 The Gerontologist