Case studies from a 6-month, ethnographic study of judicial decisionmaking on guardianship for elderly persons were used to describe four decisionmaking roles: family, attorneys, physicians, and judges. Focused upon are the two issues of conflicting roles of the guardian ad litem, and the interface between legal and medical standards of competency. Found was that societal attitudes and beliefs about aging have great impact on the guardianship decisionmaking process.
Key Words: Autonomy, Protection, Legal interventions

Guardianship and the Elderly: A Multi-Perspective View of the Decisionmaking Process[1]

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Guardianship as a protective intervention is receiving increasing attention as a strategy for protecting persons at risk from exploitation, abuse, and neglect. Viewed by most professionals as an intervention of last resort, guardianship has a profound effect on the autonomy of the ward, depriving him or her of many, if not most, decisionmaking powers (Parry, 1985).

Guardianship for the elderly has become a national concern because of the growing number of individuals aged 75 and older. As Regan (1981) noted, increasing age is often associated with loss of family and social supports, change in economic status, and the onset of late-life debilitating diseases. As each of these factors impacts upon the life of an elderly person, the potential need for protection increases, leading to greater use of guardianships (Regan, 1972). Older persons, perceived to be more susceptible to debilitating diseases and loss of cognitive capacity, are thus especially vulnerable to loss of autonomy, including personal, medical, and financial decisionmaking. Guardianships are often used to sanction such loss of autonomy as a logical outcome of providing necessary legal protections for frail and incapacitated elderly persons.

Guardianship is based on the doctrine of parens patriae, (literally, "father of his country," [Black's Law Dictionary, 1968:1269] which attributes to the state both the right, and the duty, to protect the persons and property of those unable to care for themselves) (Parry, 1985; Regan, 1972). Guardianship confers upon one individual the right and authority to make decisions regarding the management of another person's estate, material possessions, and, in some cases, personal affairs. At the same time, it removes such rights and authority from the ward. Generally, guardianships are utilized only when an individual can no longer make or enact personal or financial decisions on his own behalf. A guardian may have either limited or full (i.e., plenary) decisionmaking powers. The powers of the guardian may encompass all aspects of an individual's life, including estate matters as well as personal affairs, or they may be partial, affecting only one aspect, such as matters of the estate.

Presented is an analysis of judicial decisionmaking on guardianship for elderly persons through a multiperspective description of the decisionmaking process. Decisionmaking roles of four groups of participants are described: family members of the disabled person, attorneys, physicians, and judges. The discussion is focused upon one important aspect of the decisionmaking process: the relationship between the roles of physicians, guardians ad litem, and judges in determinations of mental incapacity.

Various terms are used here with specific meanings for the guardianship proceeding. In Illinois, in statutory language *disabled* refers to decisionmaking incapacity, including lack of ability to make or communicate decisions: It does not refer to individuals who suffer from physical disabilities alone. *Disabled person, alleged disabled person,* and *respondent* are used interchangeably to refer to the subject of a guardianship petition. *Ward* is used when a guardian has been appointed. A *guardian ad litem* is an attorney appointed by the court to conduct an investigation of the guardianship petition, inform the respondent of his or her rights, and make a determination of the need for guardianship. In some jurisdictions the guardian ad litem is also considered the legal representative of the respondent (Black's Law Dictionary, 1968:57).

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The Judicial Decisionmaking Study

In a 6-month study of judicial decisionmaking, six judges in Cook, Lake, and DuPage counties in Illinois were interviewed with regard to guardianships for older adults. To determine how ideas about the decisionmaking process were routinely operationalized through actual behavior, over 141 observations of courtroom proceedings were made. Additional interviews were conducted with 11 attorneys or program administrators who regularly petitioned for guardianships or served as counsel for alleged disabled persons, served as guardians ad litem or represented agencies providing guardianship services.

The ethnographic analysis was used to examine participants' own descriptions and meanings of guardianship and their descriptions of the guardianship process. An analytic model of judicial decisionmaking and the guardianship process was then developed.

There is remarkable national consistency in descriptions of how guardianships are awarded and in the issues which arise as part of the decisionmaking process (see the Statement of Recommended Judicial Practices, 1986). Thus, despite the study's small sample and Illinois locale, the findings presented here have application nationwide and are relevant to all who deal with questions of mental incapacity in elderly persons.

Description of the Guardianship Decisionmaking Process

Guardianship decisionmaking is a three phase process spanning the community and the courts. Pre-adjudication decisions, involving family members, attorneys, and physicians may be made within the home or community or in institutional contexts such as hospitals or nursing homes. Adjudication decisions are made by members of the judiciary and occur within the court setting. Post-adjudication decisionmaking occurs within both the court and the community, and usually involves the guardian, the guardian's attorney, and a member of the judiciary. The first phase may last days, weeks, months, or even years. The second phase is more time-limited, usually taking 1 to 3 months; however, some adjudications may be made within a few days, or, when contested, may take many months to finalize. The third phase generally lasts as long as the ward lives.

Although the guardianship process itself does not vary with the age of the respondent the impact of age is reflected in attitudinal differences, causes for the petition, and diagnoses of disability. In addition, older respondents are less likely to appear in court, less likely to contest a petition, and more likely to have a plenary guardian of both estate and person appointed (Iris, 1986).

Two fictitious, but normative, case examples illustrate the different ways guardianship decisions can be made. In the first example the decisionmaking process is short, rather prescribed, and involves few participants. In the second example the process is lengthy, involves many participants, and greatly impacts many individuals besides the disabled person.

The Case of Mrs. Flowers

The Pre-Adjudication Phase

Mrs. Flowers is a 78-year-old white woman who lives alone and has no known family. Considered peculiar by her neighbors, she dresses in a bizarre fashion, talks to herself, and frequently accuses her neighbors of stealing her food, mail, and money. A social worker from a local agency visits her once a month but at times Mrs. Flowers refuses to open her door. Her personal and medical history and sources of income are unknown.

One afternoon Mrs. Flowers collapses. Taken to the hospital, she is dehydrated and malnourished and is diagnosed as a diabetic with an irregular heartbeat. Mrs. Flowers accuses the hospital staff of trying to poison her with medications and a psychiatrist is called for a consultation. The psychiatrist describes Mrs. Flowers as suffering from paranoia and organic brain syndrome. He recommends a protective placement following her discharge. The discharge planner at the hospital arranges for Mrs. Flowers to be transferred to a nursing home and an application for public aid payments is initiated.

The hospital attorney meets with the discharge planner and agrees to file a petition for guardianship. The attorney requests a hearing within 2 weeks to appoint a temporary guardian to facilitate Mrs. Flowers' transfer to the nursing home. The hospital psychiatrist completes the medical report form and the petition is filed, naming the Office of State Guardian (a public agency) as the prospective guardian.

The court appoints a guardian ad litem who visits Mrs. Flowers and finds her disoriented and hostile. He informs her of her rights and leaves his phone number with her. During their meeting Mrs. Flowers accuses him of trying to locate her bank accounts and steal her money. Her nurses confirm that this is typical behavior for Mrs. Flowers. The guardian ad litem concludes both a guardian of the estate, to ascertain the extent of Mrs. Flowers' assets, and a guardian of the person are needed. Mrs. Flowers does not state a desire to contest the petition nor to attend the hearing.

The Adjudication Hearing

At the adjudication hearing, the judge of the Probate Court asks the attorney from the hospital to state the contents of the petition and summarize the physician's report. The guardian ad litem reads his report and recommends a plenary guardian for Mrs. Flowers because of her total incapacity to make personal and financial decisions. He states a nursing home is the best living situation for her. The judge finds Mrs. Flowers disabled and appoints the Office of State Guardian as temporary guardian of her estate and person.

An attorney from the Office of State Guardian is contacted and appears in court that afternoon. The judge instructs her to carry out the plan for discharge and to report back to the court on the state of Mrs. Flowers' finances at the plenary hearing set for 30 days hence.

At the plenary hearing the Office of State Guardian attorney informs the court Mrs. Flowers is now residing in a nursing home and appears less agitated and hostile. Mrs. Flowers has protested neither the temporary guardianship nor her new living situation. The attorney also informs the judge Mrs. Flowers has been receiving supplemental social security insurance checks and a bank account containing $500.00 has been located.

Upon hearing this report, the judge appoints the Office of State Guardian as plenary guardian of the person, but dismisses the temporary guardian of the estate, instructing the Office of State Guardian to seek a representative payee designated by the Social Security Administration to handle Mrs. Flowers' disability payments and pay her bills.

Post-Adjudication Phase

For the next 2 years Mrs. Flowers resides in the nursing home where her situation remains unchanged. A social worker from the Office of State Guardian visits her quarterly, but Mrs. Flowers never remembers her and appears disinterested in her visitor. After 2 years Mrs. Flowers dies, the Office of State Guardian arranges for her burial, and requests the court to dismiss the office as guardian.

The Case of Mr. Bernard

The Pre-Adjudication Phase

Mr. John Bernard is a black, 84-year-old widower and union pensioner suffering from hypertension and arthritis. For many years Mr. Bernard has owned and lived in a two-apartment building. One of his four daughters, Mary, lives in the second apartment and in lieu of rent, shops, cooks, and cleans for her father and takes care of the building. His other daughters live nearby and visit often.

Over the last 2 years Mr. Bernard has become increasingly forgetful and occasionally disoriented. He often forgets to take his medication or else takes two doses at once. He turns on the gas jets without lighting them, leaves his door unlocked at night, and often forgets to change his clothes. Mr. Bernard's daughters grow increasingly concerned for their father's health and safety. They speak with his physician and describe various episodes which support their contention that he is becoming "senile." The doctor agrees Mr. Bernard is deteriorating and tries to adjust his medications to decrease their effect on his mental functioning.

After repeated incidents in which Mr. Bernard loses his pension check, destroys money orders, and gives money to door-to-door solicitors for insurance policies, magazines, and home appliances, his daughters consult with an attorney as to how to protect their father from further financial exploitation. The attorney questions the daughters regarding their father's financial standing, ownership of the home, their plans for his future, and Mr. Bernard's own wishes regarding his care. He inquires into the history of the relationship between the sisters, asks how and why they came to contact him, and tries to elicit a consensus regarding future actions. The attorney then suggests petitioning for a plenary guardianship of estate and person, naming one sister as the prospective guardian. The attorney recommends that the guardian, after appointment, sell the apartment building and place Mr. Bernard in a nursing home.

Mary objects to this plan and an argument among the sisters erupts. Charges of neglect are made, of both Mr. Bernard and his apartment building, and the daughters leave the meeting angry and hostile towards each other.

Over the next 6 months as the relationship among the sisters deteriorates, Mary refuses to admit her sisters into the building to visit their father and threatens to call the police to keep them away. The other sisters complain to relatives and friends that Mary is holding their father "hostage," using up all his money, and is transferring title of the building to her own name. Mr. Bernard, further confused by the conflicts among his daughters, withdraws and becomes more disoriented.

Finally, one daughter, Nancy, contacts the attorney again, informs him of the situation and asks for help. The attorney again recommends filing a petition for guardianship. Nancy agrees to be the petitioner and gives the attorney information on Mr. Bernard's financial status and the name of his physician.

The attorney contacts the physician, informs him a petition is being filed, and requests a medical report be completed. Upon examination, the doctor finds Mr. Bernard has deteriorated greatly and is no longer able to make decisions on his own. The physician completes the medical report form, states a guardian of both person and estate is needed, and indicates Mr. Bernard can continue living in his own apartment with 24-hour supervision. Mary, afraid she will be forced to move, contacts her own attorney and files a counter-petition, naming herself as the prospective guardian.

After the petition and counter-petition are filed, the court appoints a guardian ad litem to make an investigation. The guardian ad litem contacts the attorneys for both parties and is informed of events from each perspective. She then visits Mr. Bernard, informs him of his rights, assesses his competency, and tries to elicit a history of the family relationships. The guardian ad litem also speaks separately with Mary and then with Nancy. She visits several neighbors, contacts the physician, and files her written report to the court within 6 days.

A hearing is held three weeks later. Mr. Bernard is present in court, accompanied by Mary, who is represented by her attorney. Nancy, her attorney, and Mr. Bernard's two other daughters are also present.

First, the judge hears the report of the guardian ad litem, but during the oral presentation, Mary disrupts the proceeding by voicing loud objections to the guardian ad litem's description of her feud with her sisters.

After a verbal summation of the physician's report, the sisters begin arguing with each other over who should live in the home with Mr. Bernard and provide the needed supervision. The judge instructs the attorneys to seek a consensus from their clients and return with a plan to withdraw the counter-petition or request a hearing for a trial.

After deliberating in the hallway for 30 minutes, the attorneys inform the judge their clients have reached an agreement; Nancy should be appointed guardian and Mary should continue living in the apartment building. The judge then speaks privately with Mr. Bernard, in chambers, and ascertains from him his understanding of the nature of the proceedings, his wishes regarding who should be his guardian, and his desire to remain in his own home. The judge then adjudicates Mr. Bernard as disabled and appoints Nancy plenary guardian of estate and person.

Following the adjudication, the judge asks all 4 sisters to approach the bench. He instructs them to end their feud and rally to the support of their father and maintain him in his home.

Post-Adjudication Phase

Thirty days later Nancy's attorney appears in court, files an inventory of Mr. Bernard's estate and presents the judge with an annual budget of Mr. Bernard's expenses. The budget includes $75.00 monthly apartment rent from Mary but indicates she is to be paid $50.00 per month for caring for her father.

Six months later a motion is filed by Mary's attorney asking her payments for services be raised to $100.00 per month, as Mr. Bernard's condition now requires that somebody sleep in the apartment with Mr. Bernard. The judge requests that Nancy, the sister appointed guardian, and her attorney appear in court at a later hearing. At the hearing Nancy states Mary is not fulfilling her duties and requests she be evicted and a nurse hired, using rental fees from the apartment to pay for nursing services.

The judge orders all parties to return to court to settle the matter in the best interests of Mr. Bernard. When they appear however, an argument erupts and the entire family is threatened with contempt of court. The judge informs Nancy that if the dispute is not resolved she will be dismissed as guardian and the Public Guardian of Cook County appointed instead. Shaken, the sisters agree to settle their argument and return to court in 2 weeks.

Two weeks later the family reappears and informs the court that no changes in the arrangements will be made. No further motions are filed and when Nancy's attorney files the annual accounting he informs the judge that Mr. Bernard appears content with his situation although he continues to deteriorate. Mr. Bernard dies 6 months later and Nancy is dismissed as guardian.

Commentary on the Case Examples: Decisionmakers and Decisions

These cases illustrate the different types and circumstances of decisions made during the guardianship process and the roles played by various decisionmakers. For example, the decision to pursue guardianship for Mrs. Flowers is made rather quickly by a team of professionals who know her only in the context of the hospital. All parties agree to the need for guardianship, and the process flows swiftly, especially in the absence of any protest by Mrs. Flowers. The guardianship has one primary purpose: to facilitate Mrs. Flowers' placement in a protective setting and to institute procedures to insure payment of fees.

In contrast, guardianship for Mr. Bernard becomes a complex, drawn-out, contested matter, involving Mr. Bernard and many other participants. Here, conflicting family interests are involved in the adjudication decisions. The dispute is focused on the selection of, rather than the need for, a guardian, and raises the issue of what exactly are the best interests of the ward.

This scenario is congruent with findings concerning contested guardianships for elderly persons. Courtroom observations, discussions with guardianship experts, and a perusal of the court dockets reveal that when guardianships for elderly persons are contested, the contest frequently is focused on who should be the guardian rather than the need for protection itself. Family history and interpersonal dynamics often heavily influence the outcomes of the guardianship process, including who is appointed the guardian, the time and cost of guardianship, and the impact on future family relationships.

In each case example the disabling condition and its effect on the elderly person's life differs. Mrs. Flowers suffers from a long-standing mental illness and is an eccentric, isolated individual with various paranoias who is resistant to assistance. Court room observations made as part of the study of judicial decisionmaking supported the conclusion that eccentricity leads to a determination of need for protection, rather than substantiation of a decisionmaking incapacity. Experts agree that determining the extent of a mental incapacity and its impact on decisionmaking is complex and biased against noncompliant patients (Abernethy, n.d.; Appelbaum & Roth, 1981). Mr. Bernard, in contrast, appears to be a fairly successful, compliant individual with a supportive set of relationships which evoke concern, albeit with conflicts, for his future. His disabling condition is of more recent origin.

The differing circumstances of Mrs. Flowers and Mr. Bernard lead to different guardianship decisions. The major decision made on behalf of Mrs. Flowers is the adjudication itself. The decision to place Mrs. Flowers in the nursing home resolves the question of how to best protect her. In contrast, the case of Mr.

Bernard illustrates some of the decisions a guardian might make when a ward resides in the community and has an estate. These decisions involve real estate maintenance and transactions, provisions for nursing care and supervision, and access to the ward and visitation.

Although family members, as in the case of Mr. Bernard, may have primary responsibility for initiating a petition, and for serving as the guardian, the opinions of legal and medical professionals provide the evidence used by judges to make adjudications. The important guardianship decisionmaking roles played by family members, attorneys, guardians ad litem, and judges are discussed below.

The Role of Families and the Community

When guardianship is viewed from a perspective broader than that of the courtroom setting, family members are key actors. The motivation for guardianship may stem from a desire to protect the disabled person and often is generated from within the family. In a survey of court dockets in three Illinois counties, Iris (1986) found family members filed petitions for guardianship and were named guardians in an overwhelming number of cases. For example, in Lake county, in 38 (49%) out of 77 cases surveyed, a child was appointed the guardian of a parent. Other relatives, including spouses and siblings, were named in an additional 25% of the cases. In DuPage county, children were appointed guardians for parents in 50 (47%) of 106 cases surveyed whereas other relatives were named 35% of the time.

In the absence of family, informal community support systems, such as friends, neighbors, building managers, or clergy, may be the link to a protective service system. Calls to social service agencies often are the first step in a guardianship proceeding. Or, the decision to pursue guardianship may be made within an institutional setting, such as a hospital, nursing home, mental hospital or residence, or home for the developmentally disabled. In these instances professional staff may initiate the guardianship process by informing family, if available, that such protection is needed.

The Role of Attorneys

In almost all jurisdictions an attorney begins the guardianship petitioning process by obtaining, completing, and filing the necessary forms, including the physician's report. The attorney also schedules a hearing date and sees that all relevant parties are informed of the petition.

An attorney's recommendation to file a petition is based upon several decisions: First, he must ascertain whether or not guardianship is appropriate, what the prospective guardian hopes to achieve, and the motivations for the petition. The attorney also decides what type and extent of guardianship should be requested, i.e., personal or estate, limited or plenary.

In the initial stages of the guardianship process the attorney often works closely with family or friends of the alleged disabled person to familiarize himself with the respondent's personal history. Through his investigation the attorney documents the respondent's lack of decisionmaking ability and the need for protection. The attorney usually consults with the physician to secure a medical report clearly documenting the respondent's incapacity and need for guardianship.

The Role of the Guardian Ad Litem

In most jurisdictions the court appoints a guardian ad litem or other representative to investigate the facts of the petition, ascertain the motives of the petitioner, and determine what actions are in the best interests of the respondent; for example, a nursing home placement or surgery (Statement of Recommended Judicial Practices, 1986).

The guardian ad litem also informs the respondent of his statutory rights and may be perceived as the legal representative of the respondent. For example, if the alleged disabled person wishes to contest the petition, the guardian ad litem must report this to the court, regardless of what he considers to be in that person's best interests.

The guardian ad litem plays an important role in determinations of the need for guardianship, especially when his opinion differs from that of the physician. Most guardians ad litem assess the respondent's condition regarding state of alertness and awareness, ability to engage in a coherent conversation, the respondent's orientation to time and place, and whether or not the respondent can pass a mental status exam. The outcome of the evaluation is then weighed against the findings in the physician's report and the observations of involved others, such as family members, hospital personnel, and nursing home staff. The guardian ad litem reports his findings to the court in an appearance at the adjudication hearing and his testimony becomes an important piece of evidence considered by the judge in reaching an adjudication decision.

Role of the Physician

In almost all jurisdictions, a medical report must be filed documenting the respondent's disability (Statement of Recommended Judicial Practices, 1986). Such reports usually state the nature of the disability, the respondent's physical and mental condition, and the degree of impairment and limitations on decisionmaking ability. In Illinois, the physician also recommends an appropriate living situation for the ward and can include a plan for treatment and habilitation when applicable.

Medical decisionmaking on incapacity almost always occurs within the context of a medical setting, outside the confines of the court. In some jurisdictions, however, medical examiners are appointed by the court or a physician personally presents his findings in court. Attorneys and judges alike view the

medical report as one of the most important pieces of evidence submitted to the court in support of the claim of disability.

The Role of the Court

The court has two roles in guardianship proceedings. First, the court is responsible for guaranteeing the rights of the respondent to the extent required by state statutes. Second, adjudications of mental disability are made within the context of a legal setting by judges or other court personnel.

Judges have ultimate responsibility in declaring persons disabled, generally through two types of decisions: those related to the finding of disability and those following the adjudication. Judicial decisionmaking seems rather shallow, especially when compared to the decisionmaking which precedes the actual hearing as described earlier. Adjudication decisions are based primarily on a review of the evidence presented in the petition, by the guardian ad litem, and in the medical report. Judges and other interviewees usually described the decisionmaking process in terms of process rather than content by outlining procedural steps rather than cognitive tasks.

When appointing the guardian, judges generally inquire into four areas: (1) the ability of the petitioner to meet the needs of the ward; (2) potential conflicts of interest between the petitioner and the ward; (3) the nature of the relationship between the guardian and the ward; and (4) at times, the expressed choice of the ward. Guardianship through a public agency is determined by the financial status of the ward and pursued only when no one else can serve as the guardian. Decisionmaking in this area is based upon both the report of the guardian ad litem as well as judicial inquiry conducted during the adjudication hearing.

Post-adjudication judicial decisionmaking includes both decisions made shortly after the adjudication hearing and decisions made over time. Some decision areas are predictable, such as review of an inventory of the ward's assets, approval of an annual budget, and the awarding of attorneys' fees out of the ward's estate. Less predictable decisions such as approval of changes in the ward's living situation or major financial transactions also require judicial approval.

Discussion and Conclusions

The guardianship decisionmaking process has been described, including pre-adjudication, adjudication, and post-adjudication phases, and the roles of four sets of participants have been examined: family, attorneys, guardians ad litem, and judges. Several issues which have surfaced through this analysis demand further investigation. First, the role of the guardian ad litem presents a potential conflict of interest when the wishes of the respondent conflict with the alleged need for guardianship. A guardian ad litem represents the court and has investigative responsibilities, but he is also charged with certain responsibilities to the respondent, including representing the respondent's wishes to the court (see Dubler's article in this issue). When opinions differ about the need for guardianship, or when a protest is lodged by a respondent or some other individual, the role of the guardian ad litem may become confused with that of a legal representative. This confusion, noted elsewhere by Peters et al. (1985) and earlier by Morrissey (1982), exemplifies the need for clearer delineation of the role of the guardian ad litem.

Second, guardianship proceedings draw upon two sets of standards in determining the need for a substitute decisionmaker. As noted repeatedly in the literature, physicians' determinations of decisionmaking incapacity are based on medical assessments of mental disability and may rely on standards different from those used in legal settings (High, 1987; Horstmann, 1975; Navin, 1968; Peters et al., 1985). For example, medical concerns regarding decisionmaking incapacity tend to focus on the patient's ability to consent to or refuse treatment (Abernethy, n.d.; Appelbaum & Roth, 1981; Gutheil & Bursztajn, 1986). In this issue Stanley et al. discuss the ability of elderly individuals to make informed treatment decisions and describe standards of decisionmaking competency whereas Dubler delineates types of decisions elderly persons make in health care settings and discusses the impact of mental capacity on the decisionmaking process.

The guardian ad litem, however, generally views the decisionmaking ability of the respondent from a legal perspective, basing his opinion upon legal standards, as well as personal experience and knowledge (Iris, 1986). These standards are focused upon the respondent's ability to enter into legal relationships as well as to make certain personal decisions, which might include refusal or acceptance of medical treatment, and choice of residence. Yet, none of the guardians ad litem interviewed as part of this research had specialized training in any aspect of mental disability or mental illness. Instead, they relied upon standardized tools to assess competency (i.e., a brief mental status exam), personal opinion, and the reports of physicians, nurses, caretakers, and family members. Because these opinions often constitute the basis for the petition in the first place, such information may be perceived as biased in favor of a statement of disability. Further explication of the link between legal and medical standards of incompetency is needed as is an educational program in the area of aging, decisionmaking, and functional capacity for legal and medical professionals involved in the guardianship process.

These conceptual and training needs are heightened by the influence that societal attitudes about the aged and the aging process have on the outcome of guardianship proceedings for elderly persons. Aging is often associated with physical and mental decline and some loss of cognitive ability is expected (Butler, 1975; Fry, 1981; Iris, 1986). Because of such persistent beliefs, legal and medical practitioners

often fail to distinguish mental confusion and disorientation caused by transitory physical factors, such as those related to the effects of treatment, from that caused by permanent organic change, as in Alzheimer's Disease (O'Brien, 1987). Treatment and rehabilitation are not seen as viable interventions to restore individuals to a higher level of functioning. Fluctuating capacity is difficult to assess and thus limits on the powers of the guardian are generally not imposed (Iris, 1986).

Physicians, attorneys, and judges make their determinations of incapacity drawing upon personal as well as professional knowledge and training. Information about the effects of aging on decisionmaking style, lifestyle changes, and functional ability is needed to ensure a fair appraisal of each respondent's decisionmaking ability. Self-examination of standards of appropriate behavior and acceptance of differences are also important when assessing the effect of personal judgment in guardianship decisionmaking.

As Dubler points out in this issue, society often responds to the needs of a frail, elderly person with a desire to protect at all costs, to the total exclusion of personal risks. The avoidance of risk, however, often imposes limits on autonomy, beyond those which might be reasonably required to protect person and property. Guardianship can be viewed as a positive means of protecting the well-being, safety, and material assets of vulnerable persons, but when misapplied, or when applied too broadly, the result may be unnecessary restrictions on personal autonomy. The challenge in guardianship decisionmaking is to strike a balance between the need for protection and the maximization of autonomy.

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