

# Beyond the Black Letter of the Law: An Empirical Study of an Individual Judge's Decision Process for Civil Commitment Hearings

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To study the role of *parens patriae* and "police powers" considerations in an individual judge's civil commitment decisions, the judge's reports of the impact of various characteristics of the patient were analyzed. The validity of this methodology was tested by comparing it to an alternative technique based on objective, statistical analysis of the dependence of the judge's decisions upon patient characteristics. A probate court judge filled out a questionnaire after each civil commitment hearing over which he presided during a seven-month study. For each of 26 decisions, the judge rated the patient on 26 features and indicated the impact of each feature on the decision. The judge's responses were analyzed to measure the role of various statutory and nonstatutory considerations (expressed as patient characteristics) in the judge's decisions. Results using self-reported impacts are compared with an objective, statistical characterization of the judge's decision-making policy. As in previous studies, the *parens patriae* model more closely described the individual judge's decision process than the "police powers" model. Contextual variables (e.g., the patient's family favoring commitment) also were influential. Results with the two methods were similar. The methodology developed here can be used not only in further research on judicial commitment decisions but also to educate judges and other decision-makers individually faced with potentially tragic choices as to their personal implicit decision-making strategies.

The judicial decision to involuntarily commit a person with psychiatric illness

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is an example of a real world decision, under conditions of uncertainty, with potentially tragic outcomes. The controversy about the courts' and psychiatrists' proper role in involuntary commitment focuses on their occasionally competing duties to protect the public and to help the patient.<sup>1</sup> In several states there are statutory requirements to attend to both concerns. In previous work we have devel-

oped a method to study decision making behavior and applied it to aggregate samples of psychiatrists<sup>2,3</sup> and judges.<sup>4</sup> We now apply this method to a new data set of decisions made by an individual judge. The analysis of an individual judge's data will be demonstrated, allowing validation of the use of the method for describing a judge's explicit and implicit decision-making strategies.

The various state commitment laws in the United States are based on a broad spectrum of policy considerations<sup>5</sup> that can be seen as deriving from two generative models: *parens patriae* and "police powers."<sup>6</sup> *Parens patriae* is a term from English common law referring to a king's responsibility to protect his subjects as a parent would his children. An alternative model is the police powers model, which refers to the powers of the state to protect individuals from dangerous people. Whereas several commitment criteria associated with ability to care for self and suicidality can be best understood as falling within the *parens patriae* tradition, the criteria related to violence and dangerousness to others represent the traditional police power concerns of the state. Normative arguments have been advanced supporting both models. Proponents of each model have also used the "bright line" argument (clarity and ease of administration) to argue for the usefulness of each.<sup>1</sup> Although the statutes state general principles, individual patients present with concrete personality characteristics, symptoms, and histories. The judge's task, of course, is to make a judgment—to consider the patient's individual characteristics as evidence relating to

the general issues of protecting other people as well as protecting the patient. There is need for empirical data about the decision-making processes of judges in jurisdictions where the statute is a mixture of both.

Our previous research on commitment decisions as they are perceived and constructed by patients, psychiatrists, and judges<sup>7</sup> has investigated the decision-making policies of clinicians at a number of points in time, as the social, legal, and economic climate has changed.<sup>2,3</sup> These and other studies of the reasoning process of clinicians petitioning the court for civil commitment of patients have indicated that clinicians follow a *parens patriae* model in the process of deciding whether to seek to retain patients in psychiatric hospitals against their will. In addition, we have hypothesized that real world decision-making strategies that are explicit and easily recognizable coexist with strategies that are implicit and difficult to elicit and articulate.<sup>8</sup> Our investigation of the decision-making policies of civil court judges in Massachusetts<sup>4</sup> has demonstrated that judges use many factors in the decision-making process rather than limiting themselves to the explicit statutory variables (the "black letter of the law"). The present investigation represents a more focused investigation of an individual's decision-making processes. We use data provided by a judge from Colorado, a state with statutes that combine police powers and *parens patriae* considerations similarly to Massachusetts. Although the snapshot comparison between states is fascinating, our main goal is to explore the nature of an indi-

vidual judge's decision-making process when applying the "black letter of the law" to individual cases.

Two empirical methods for describing the judge's decision process are used in this study. Each allows us to make statements about the relative weight that different factors carry in making the decision whether to commit a patient. The first method makes use of self-reports of the impacts that particular facts about a patient have upon the decision made about the patient.<sup>9</sup> Thus, a judge might indicate that a patient's particular amount of "dangerousness to self" had a slight impact on the decision, in the direction of committing the patient. The second method employs correlation and regression statistics to measure the relative contribution of various patient factors upon the judge's decision.<sup>10</sup>

The contrast between these two methods is essential to this article and its relation to previous studies. The first method depends on the judge reporting some information about the relation between the patient characteristics and the decision about the patient—the impact that the particular characteristic had upon the decision.<sup>3, 4, 11, 12</sup> The second method is a variant of a procedure used for many years that treats the mind as a "black box," analyzing the statistical relation between the inputs and the outputs.<sup>10</sup> Here the inputs are patient features, and the output is the decision whether to support the psychiatrist's request to commit the patient or let the patient go free. A statistical procedure such as multiple regression or ANOVA is used to produce a "best fit" model of how the judge's deci-

sion depends on the patient features. The parameters of the statistical model can be used to define the relative weight that the judge puts on different patient characteristics in making the decision.

A potential advantage of the impact-rating method is that it can provide insight into the process using only one or a few patients, while using the statistical method to describe a judge's decision-making policy requires an individual judge to have made decisions about a relatively large number of patients. Additionally, the impact-rating method can be meaningfully applied when the same choice is made in all of the cases considered, while the statistical methods work best when the decision is "yea" about as often as it is "nay." As such, the impact-rating method may be useful as an educational tool to provide the individual judge with a cognitive roadmap of the interaction of explicit statutory and implicit nonstatutory factors in the judge's own decision-making process.

## Methods

Data are presented from one Colorado probate court judge with four years' experience on the bench. He completed a four-part questionnaire immediately after every civil commitment hearing over which he presided during a seven-month study period (September 1985 to March 1986). The strategy of in-depth study of single decision-makers is advocated for the insight it provides into actual decision processes when there is the possibility of significant individual differences.<sup>13</sup> If one judge relies heavily on factor A, and a second relies heavily on factor B, use of

their combined data to describe their aggregate decision-making policy might lead to the conclusion that they each weigh factors A and B about equally, which would be true for neither of them.

The questionnaire was substantially identical to one that appears in an earlier publication.<sup>7</sup> Part 1 consisted of demographic data concerning the patient, the judge, the petitioning facility, and the hearing. Part 2 (rating of patient characteristics) asked the judge to rate the patient on a seven-point scale for 26 variables (e.g., 1 = frightening, 7 = not frightening; 1 = able to take care of self, 7 = not able to take care of self). The characteristics are shown in Table 1. Part 3 (rating of impact) asked each judge to go back and rate the impact of each of the 26 patient characteristics upon the decision to commit or not. Instructions were: "The number -100 means that this fact about the patient was strongly against commitment in your thinking, and +100 means that the fact is strongly for committing the patient, and 0 means the fact has no bearing at all on your decisions." Part 4 was a seven-point scale for rating the ease with which the decision was reached. Similar questionnaires have been used previously with judges<sup>4</sup> and with psychiatrists.<sup>2,3</sup>

The judge returned 27 questionnaires on the decision to commit. In the previous study using this questionnaire with Massachusetts judges,<sup>4</sup> the decision for every patient was to support the psychiatrist's petition for commitment. The fact that the Colorado judge denied the psychiatrist's petition to commit, and thereby released some patients, permitted analyses that

were not possible in the previous study. This allows us to make comparisons between the impact-rating method and statistical description methods that have not previously been reported for judges' commitment decisions.

The impact-rating measure used is the self-reported impact of each patient characteristic on the commitment decision. This indicates which patient characteristics the judge felt played an important role in his decisions with this group of patient plaintiffs. It also indicates the type of role the judge felt the patient characteristic played (whether it made the judge favor commitment or release)—information that is available in the correlation of a patient characteristic with the decision, but not in the proportion of variance the patient characteristic uniquely accounts for (see below).

For the statistical description of the judge's decision-making policy, the relation of each patient characteristic to the judge's decision whether to commit is expressed using several statistical techniques. First, correlation expresses the relationship between a patient characteristic (measured on a 1 to 7 scale) and the decision (measured numerically as 0 for release and 1 for commitment) on a scale ranging from -1 (the more of the first variable, the less of the second variable) through 0 (no relation) to +1 (the more of the first variable, the more of the second).

The second statistical technique focused on the proportion of the decision variance that each patient characteristic accounted for in a multiple regression analysis. Although traditionally the regression coefficients from a multiple re-

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gression analysis (using all available cues to predict the decision or judgment) have been used to express the relative influence of the various cues,<sup>10</sup> this was not possible in the present case. The judge made a decision about 26 patients, and information was available about 26 cues. If all the information were used in one analysis, the data would be “overfit” and the results meaningless.

As an alternative that allowed a meaningful comparison, we produced twenty-three four-predictor multiple regression models. Each model included three core characteristics central to the police powers and *parens patriae* justifications for involuntary commitment; the patient’s ability to take care of self, the degree of threat of violence to others, and the degree of threat of violence to self. Earlier work has investigated whether these three characteristics in themselves account completely for clinicians’ decisions to seek judicial commitment.<sup>2,3</sup> Every patient characteristic other than these three is included as the fourth predictor in a multiple regression analysis. For comparison, this characteristic’s “unique contribution” to predicting the decision—the proportion of the decision variance explained that was due to this variable, over and above the variance that was already explained by the three core variables—is used as a measure of the relative importance of that variable in determining the judge’s decision. In contrast with the simple correlations between patient characteristics and the decision, this measure takes account of the possible redundancy between the core characteristics and each of the other characteristics.

Finally, we will report the correlation between the judge’s perception of the patient’s competence and each of the other patient characteristics. The concept of patient competence is the key to patient ability to make responsible decisions, including decisions about whether to be violent and decisions about taking care of self.<sup>14</sup> Judges’ perceptions of the relation between competence and other patient characteristics have been investigated in a previous study.<sup>4</sup>

## Results

The judge in our study committed the patient in 24 of the 27 cases, denied the psychiatrist’s petition for commitment in 2 cases, and continued 1 case. Correlation provides an objective statistical index of a patient characteristic’s influence upon the judge’s decision. The correlations between the decision (coded so that commit = 1 and deny = 0) and the judge’s rating of each of the 26 patient characteristics are shown in the left column of Table 1. Two variables related to patients’ ability to care for self were significantly correlated with the judge’s commitment decision (not able to care for self,  $r = .58$ ; and family or friends favor commitment,  $r = .66$ ); the more the patient had the characteristic, the more the judge tended to commit. The patients’ suicide potential was related to the decision (not dangerous to self,  $r = -.49$ ). The patients’ violence was not significantly correlated. Other statistically significant predictors of the judge’s decision were the prediction regarding whether the patient would be a reliable outpatient ( $r =$

**Table 1**  
**Statistical Descriptions of an Individual Judge's Decision Making Strategy in 26 Civil Commitment Hearings: Objective Relations Between the Judge's Decision Concerning Commitment and 26 Patient Characteristics**

Characteristic	Correlation		Proportion of Decision Variance Due to Patient Characteristic	
	<i>r</i>	Rank <sup>a</sup>	<i>R</i> <sup>2</sup>	Rank
Violence of patient				
A. No danger to others	-.26	15	— <sup>b</sup>	—
B. No extra security present	-.15	21	.001	21
C. No more than verbal threats	-.29	13	.013	8
D. Violence only in remote past (if at all)	-.36	8	.072	5
Suicidality of patient				
E. Not dangerous to self	-.49**	5	— <sup>b</sup>	—
F. No self-destructive behavior (only threats)	-.31	10	.004	18
G. Self-harm only in remote past (if at all)	-.30	11	.003	20
Patient's ability to care for self				
H. Not able to take care of self	.58**	3	— <sup>b</sup>	—
I. No adequate place to live	.27	15	.012	9
J. Not capable of working	.37	7	.004	18
K. Family or friends favor commitment	.66**	1	.077	4
Predictions regarding patient				
L. Would not be a reliable outpatient	.61***	2	.081*	3
M. Cannot be counted on to take medications	.11	23	.007	13
N. Poor prognosis	.17	19	.008	12
O. Appropriate treatment not available at institution	-.30	11	.032	6
Judge's information				
P. Expert witness (psychiatrist) not convincing	-.05	25	.007	13
Q. Patient not well-known to judge	-.15	21	.007	13
Judge's opinion about patient's state				
R. Not in distress	-.19	18	.026	7
S. Composed	-.39	6	.010	11
T. Cooperative	.09	24	.011	10
U. Seems incompetent	.56**	4	.128**	1
V. Manages affairs incompetently	.17	19	.000	23
W. Unpredictable	.34	9	.103**	2
Judge's reaction to patient				
X. Appears well-groomed	-.23	17	.001	21
Y. Not frightening	-.29	13	.005	17
Z. Not likable	.04	26	.006	16

<sup>a</sup> Rank of absolute value of correlation.

<sup>b</sup> The *R*<sup>2</sup> listed for these characteristics is the proportion of variance in the decision variable that is explained by the patient characteristic above and beyond that explained jointly by the three legally mandated criteria, danger to others, danger to self, and ability to care for self. Hence, no variance is listed for those three criteria.

\* *p* < .10; \*\**p* < .05; \*\*\**p* < .01.

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.61) and the judgment of the patient's competence ( $r = .56$ ).

It should be remembered that there were only two patients for whom the judge denied the psychiatrists' petition to commit, so the correlations are based on differences between these two patients and the other 24. It is possible that different variables might play an important role in different samples.

A second statistical index of the importance of the patient characteristics for the judge's decisions is the measure of their unique contribution to the decision. For all variables other than the three specified by statute (the patient's ability to take care of self, the threat of violence to others, and the threat of violence to self), the third column of Table 1 shows the contribution of each variable to prediction of the judge's decision over and above the contribution made by the three statutory factors. Those three variables jointly account for 45.2 percent of the commitment decision variance in a regression analysis. The  $R^2$  numbers in column 3 represent the additional proportions of variance explained when each patient characteristic, in turn, is added to the three statutory variables in the regression analysis. Competence accounted for an additional 12.8 percent of the decision variance, patient predictability accounted for an additional 10.3 percent, and whether the patient would be a reliable outpatient added 8.1 percent. This indicates that the patients' competence, predictability, and reliability constitute an important cluster of factors influencing the judge's commitment decisions that are not reducible to the three

core concepts that define the "black letter of the law."

The judge's ratings of the impact of each of the 26 patient characteristics upon his decision about the patient provide essential information about his conception of his own decision process. Unlike the correlation and unique contribution measures in Table 1, conclusions drawn from this "gray box" method do not depend on the particular patients whom the judge decided to release.<sup>9</sup> The impacts of the individual patient characteristics are given in column 1 (means: 0 = no impact) and column 2 (ranks: 1 = greatest impact) of Table 2. The judge reported that the credibility of the psychiatrist expert witness had the most impact toward commitment (mean impact = 80) across all of the cases. He reported that the predictions regarding the patient (reliability as outpatient, 52; prognosis, 52; reliability in taking medicines, 49; and appropriateness of treatment available at institution, 43) had more impact toward commitment in this set of patients than the factors related to dangerousness to self (36), dangerousness to others (16), or ability to care for self (39).

The judge seldom indicated that a patient characteristic made denial of the psychiatrist's commitment request likely. The characteristic that most frequently received a negative impact rating was "not in distress," which had an impact toward denying the request for only 5 of the 26 patients. The judge frequently indicated that a patient characteristic had a 0 impact, and in fact never gave an impact other than 0 to the characteristic "likable."

**Table 2**  
**Impact Rating Method's Description of Judge's Decision-Making Strategy<sup>a</sup>**

Patient Characteristic	Impact on Judge's Decisions <sup>b</sup>			Correlation with Incompetence		
	Current study (CO)		Prior study (MA)	Current study (CO)		Prior study (MA)
	Mean <sup>c</sup>	Rank	Rank	<i>r</i>	df	<i>r</i> <sup>d</sup>
Violence of patient						
A. No danger to others	16	17	7	-.48**	25	.02
B. No extra security present	0	23	23	-.26	25	-.16
C. No more than verbal threats	20	14	7	-.18	21	.14
D. Violence only in remote past (if at all)	21	12	4	-.22	19	-.27
Suicidality of patient						
E. Not dangerous to self	36	8	10	-.09	25	-.14
F. No self-destructive behavior (only threats)	32	9	11	.02	24	-.14
G. Self-harm only in remote past (if at all)	24	11	12	.09	23	.03
Patient's ability to care for self						
H. Not able to take care of self	39	7	3	.33 <sup>#</sup>	26	-.13
I. No adequate place to live	6	21	15	.41*	23	-.13
J. Not capable of working	6	21	16	.27 <sup>#</sup>	26	.47**
K. Family or friends favor commitment	21	12	19	.33	12	.39*
Predictions regarding patient						
L. Would not be a reliable outpatient	52	2	2	.62***	26	.26
M. Cannot be counted on to take medications	49	4	5	-.10	26	.18
N. Poor prognosis	52	2	6	.45*	26	.15
O. Appropriate treatment not available at institution	43	6	9	.14	26	.01
Judge's information						
P. Expert witness (psychiatrist) not convincing	80	1	1	.16	26	-.19
Q. Patient not well known to judge	8	19	26	-.36 <sup>#</sup>	26	.01
Judge's opinion about patient's state						
R. Not in distress	16	17	21	-.11	26	-.25
S. Composed	46	5	17	-.35*	26	.43**
T. Cooperative	-1	26	22	.17	26	.37*
U. Seems incompetent	28	10	18	~	~	~
V. Manages affairs incompetently	20	14	~ <sup>e</sup>	~ <sup>e</sup>	~	~
W. Unpredictable	19	16	13	.17	26	.53**
Judge's reaction to patient						
X. Appears well-groomed	0	23	25	-.44*	26	-.18
Y. Not frightening	7	20	20	-.26	26	-.21
Z. Not likable	0	23	24	.49**	26	.47**

<sup>a</sup> Average subjective impact of patient characteristics upon commitment decision, and relation between judge's perceptions of patient incompetence and patient characteristics, in 26 civil commitment hearings. Data from prior Massachusetts study are included for comparison.

<sup>b</sup> Mean denotes the average impact for a patient characteristic, across all patients the judge rated. Rank is the relative size of the absolute value of the mean impact, comparing all patient characteristics: 1 = largest, 26 = smallest.

<sup>c</sup> -100 = strongly favoring release; +100 = strongly favoring commitment.

<sup>d</sup> df in the prior study ranged from 25 to 31.

<sup>e</sup> This patient characteristic not included in Massachusetts study.

<sup>#</sup>  $p < .10$ ; \* $p < .05$ ; \*\* $p < .01$ ; \*\*\* $p < .001$ .

The data provide several indications that the judge's impact ratings are valid, that is, are related to the actual decision. First, the sum of the impacts of all patient characteristics would be expected to be more positive when the decision was made to commit, and indeed the correlation between the sum of the judge's impact ratings and the judge's decision (0 = deny and 1 = grant the decision to commit) is positive ( $r = .49$ ) and statistically significant ( $p < .01$ ). Only two patients had a negative average impact rating over all patient characteristics: the two for whom the judge denied the petition to commit.

Second, one might expect that the decision would be more difficult when the sum of the impacts was closer to 0. The mean difficulty of the 24 commitment decisions was 2.3, while the mean difficulty of the 2 denial decisions was 5.0. The correlation between the absolute value of the sum of the impacts and the rated difficulty was  $-.59$  ( $p < .01$ ), largely due to the fact that the judge found it easier to make a decision about patients who had more characteristics that made him intend to commit.

The third type of evidence related to the validity of the impact ratings is the relationship of the ratings to indications of the relative importance of the patient characteristics that were provided by the objective, statistical measures. Figure 1 provides a comparison between (1) the judged impacts of the individual patient characteristics and (2) the correlations between the patient characteristics and the decision. The ranks of the judge's self-reported impacts for each patient charac-

teristic (x-axis; from column 2 of Table 2) are compared with the ranks of the characteristics' correlations with the decision (y-axis; from column 2 of Table 1). Most characteristics appear along the ascending diagonal, which indicates agreement between the two methods (objective analysis via correlation, and subjective rating of impacts). The Pearson correlation between these ranks is  $r = .34$  ( $n = 26$ ,  $p < .05$  one-tailed). In the lower left corner of the graph are variables that are considered important by both methods: reliability as outpatient (L), patient composure (S), ability to take care of self (H), danger to self (E), and patient incompetence (U) are patient characteristics that were ranked in the top 10 on each index. That is, these patient characteristics had a high correlation with the judge's decision whether to legally commit the patient; the judge also reported that they had a large impact on his decision.

Some of the variables were ranked more important by one method than by the other. In the upper left corner, psychiatrist not convincing (P), poor prognosis (N), and unreliable with respect to taking medication (M) were not correlated with the decision, although the judge reported them as having a strong impact on the decision. In the lower right corner, family favors commitment (K) had the highest correlation with the decision but the 12th ranked impact, and not able to work (J) was the 8th most important correlation but ranked 21st among the rated impacts.

The Colorado judge's ratings of the impacts of these patient characteristics upon his decisions whether to commit (ranking shown in second column of Ta-

Comparison of ranks of factors, by impact rating and correlation methods

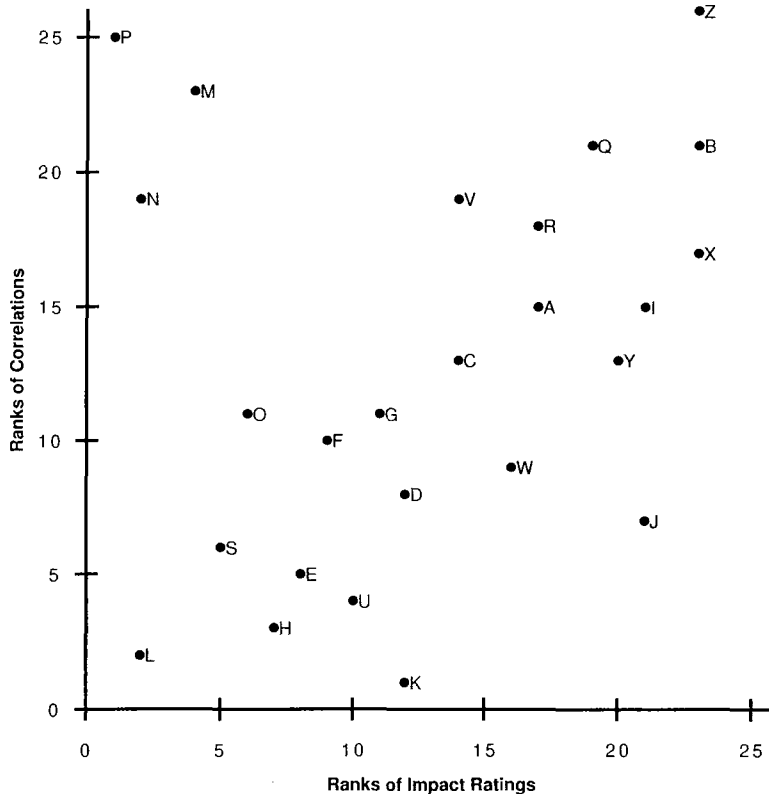


Figure 1. Comparison between rank of judged impacts of patient characteristics and rank of correlations between patient characteristic and commitment decision for a Colorado probate court judge.

ble 2) can be compared with the self-reported impacts of a group of five Massachusetts judges studied previously,<sup>4</sup> shown in the third column of Table 2. The ranks are fairly similar, with occasional exceptions. For example, whether a patient is composed (S) or seems incompetent (U), whether family or friends favor commitment (K), and whether the patient is well known to the judge (Q) had a much greater impact toward commitment for the cases decided by the Colorado

judge than for the cases decided by the Massachusetts judges, while patient characteristics relating to danger to others (A, C, and D) had a greater impact on the Massachusetts judges' cases.

The correlation of incompetence with each of the other patient characteristic ratings is given for the Colorado judge in column 4 of Table 2. The judge's perception of patient incompetence was related to his perception of 11 other patient characteristics, including at least 1 in each

group. The correlations among the same variables from the study of the Massachusetts judges are given in the last column of Table 2. For many variables, the correlations of incompetence judgments with the other patient characteristics were similar for the judges from the two states. Thus, they agreed that patients who were not likable (Z) or whose families or friends favored commitment (K) tended to be incompetent, and that patients who were composed (S) or had no recent history of violence (D) tended to be competent. On the other hand, the Colorado judge considered danger to others (A), how often the patient had appeared before the judge (Q), whether the patient would be an unreliable outpatient (L), poor prognosis (N), and poorly groomed appearance (X) to be more strongly correlated with incompetence than the Massachusetts judges did.

### Discussion

#### *Findings Concerning a Judge's Decision Policy for Commitment Hearings*

This investigation of a single Colorado judge's policy for deciding whether to grant or deny psychiatrists' petitions for commitment of patients with mental illness provides insight into the individual's reasoning with respect to the two principles, *parens patriae* and police powers. The Colorado judge, like the Massachusetts judges described earlier,<sup>4</sup> used *parens patriae* considerations, such as a patient's inability to care for self and potential to commit suicide, in deciding whether to commit psychiatric patients. In this representative set of commitment hearings, both methods for characterizing

the judge's decision policy, the impact rating method and the statistical analysis of the relations between the patient factors and the judge's decision, indicated that the *parens patriae* considerations received greater weight than the police power considerations of preventing violence to others.

Our study, using these methods, also showed that the judge considered factors that are not directly specified in the statement of the law. Among the specific factors this judge used in considering whether the law's general principles applied in each case were the patient's competence, predictability, and reliability as an outpatient, as well as whether family and friends favor commitment. Each of these factors can, in specific cases, inform the clinical decision as to the likelihood that the threshold has been crossed for the criteria specified by law for committability. Moreover, the additional factors considered can be also be understood as parameters for translating mental illness narratives into a form in which they can be compared with the statutory principles (Benzion Chanowitz, personal communication, June 1996).

Our findings give further support to the proponents of *parens patriae* as a descriptive model of how both clinicians and judges make decisions regarding commitment. Certainly someone's ability to take care of self, as well as suicidal potential, is a reflection of the degree to which he or she has a social support system. Thus, proponents of the *parens patriae* model, ourselves included, can find support in the Colorado judge's decision-making use of information about whether or not

families favor commitment. However, we also know that families are not always supportive. Sometimes, when seriously dysfunctional, they can retard a patient's autonomy. The fact that our judge considers the family's attitude to be important in deciding whether to commit an individual patient supports the notion that both judges and clinicians can benefit from education concerning not only the positive but also the negative influences of social support systems.<sup>15, 16</sup>

We recognize that experienced judges know the applicable law, and their task is to apply the general statement of the law to each particular case. The method for applying the law can not be specified in the letter of the law. However, it is a process that can benefit from self-reflection and peer discussion.<sup>17, 18</sup> Judges can be helped to articulate their intuitive decision-making processes by extending their training from the black letter of the law to the clinical factors that they consider to be important in the decision to commit. If judges, like clinicians,<sup>2, 3</sup> intuitively use a variety of *parens patriae*-like factors in their decision-making process, being able to both recognize and articulate these factors is vital. The impact-rating method can be used on a wider basis to help individual clinicians and judges identify which factors they intuitively use in making commitment decisions. This could be part of a broader effort to educate individual judges and clinicians in a variety of universal pitfalls in the perception of others, related to the individual factors they consider to be important in the decision to commit. This endeavor might include education in psy-

choanalytic concepts such as the coloring of perceptions of competence, predictability, and reliability by countertransference factors, including projection and overidentification. Our task is not to change which factors individual judges consider to be important in commitment decision-making, but to help individuals be aware of which factors they consider and of the pitfalls in the process of integrating those factors into an overall decision.<sup>19</sup>

**Methodological Contribution of the Study** Our study is the second one to apply the impact-rating method to judges' decision-making policies for petitions to commit psychiatric patients. Unlike the first study,<sup>4</sup> here it was possible to compare the information provided by the impact-rating method with the results of the more conventional statistical methods for analyzing the judge's decisions, because the set of cases included ones in which the judge denied the psychiatrist's petition.

The availability of cases in which the petition to commit was denied as well as granted gave an objective standard for evaluating the validity of the impact-rating method. The judge rated the impact of each patient characteristic, giving a negative rating if the characteristic made the release of the patient more likely, 0 if it had no effect on the decision, and a positive number if it made commitment more likely. When these impacts were averaged over all characteristics, for each patient, this average was significantly related to the judge's actual decision, being negative for the released patients and positive for those committed. Further, the

judge reported more difficulty with those decisions where the average impact of the patient characteristics was closer to 0, indicating more contradiction among the impacts. Thus, the impact-rating method provides a way to address the judicial "preponderance of the evidence."

Most importantly, there was a positive relation between the measures of the relative importance of the patient characteristics produced by the impact-rating method and the statistical analysis of the decisions. As shown in Figure 1, characteristics such as ability to take care of self, danger to self, and reliability as an outpatient were identified as important by both methods, while characteristics such as the patient's cooperativeness and likability were identified by each as unimportant.

The agreement between the two methods is not perfect, and there are good reasons why this may be so. The differences call our attention to the relative strengths of the two methods as well as to their different meanings. First, the measures of the importance of the patient characteristics in the judge's decision that are produced by statistical analyses may not be as valid as usual in this study, because there were a relatively small number of cases from a statistical perspective, and because only two of these patients were released. The 26 cases were not sufficient for a full (multivariate) statistical analysis of the 26 patient characteristics. It was necessary to limit the scope of our analysis, looking either at only one patient characteristic at a time (using correlation as the index of relative importance) or at only 4 at a time (using

the patient characteristic's contribution to the variance, over and above a set of three core characteristics). These statistical compromises involve a sacrifice, for they do not take advantage of the ability of multiple regression techniques to compensate for intercorrelations among variables, when all of the factors can be included in the same analysis.

A more important weakness of statistical analysis for describing a judge's decision policy, as applied in the present study, is that the judge denied the psychiatrists' petitions to commit in only 2 cases out of 26. This means that the estimates of the relative weights of the patient characteristics in influencing the decision may be overly influenced by the peculiarities of these two cases. Such statistical estimates are more robust when there are approximately equal numbers of each outcome of the decision. However, it is in the nature of the adjudication of conflict about whether to release psychiatric patients that most of the decisions support the psychiatrist's request for commitment, as shown by our earlier study as well.<sup>4</sup> Hence, even if the impact-rating method is supremely valid, one could expect some disagreement with the statistical methods.

The impact-rating method's estimates of the relative importance of the different patient characteristics does not depend critically on the features of the very small minority of cases that are not committed. Thus, it would have produced similar descriptions even if all 26 of the judge's decisions had supported the petition to commit. As such, it may be the best way to study decision situations where one of

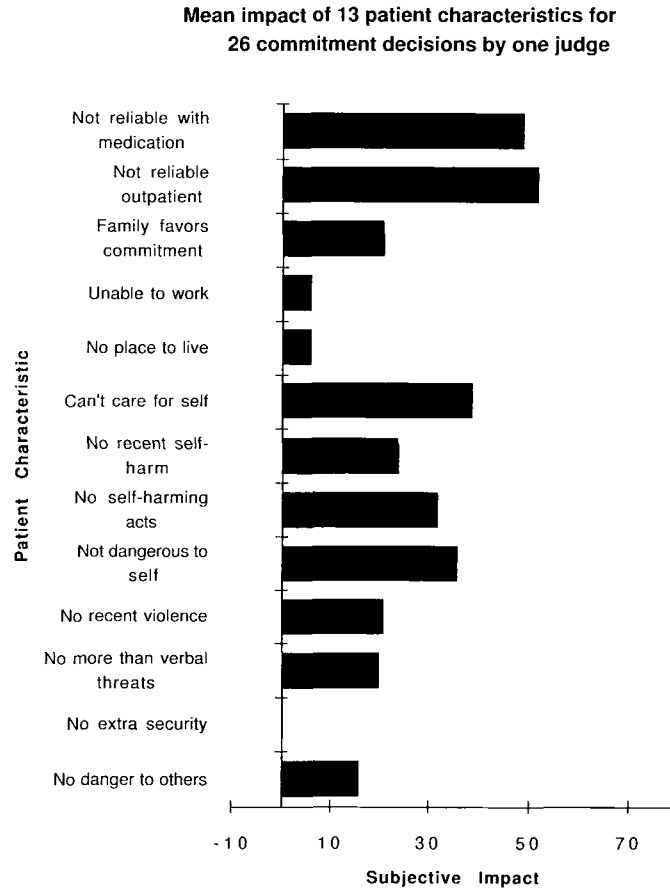


Figure 2. Display of an individual judge's average self-reported relative impacts for a set of patient characteristics.

the options is chosen only rarely. A display such as that in Figure 2 presents the information from the impact ratings in a convenient fashion. It could be used by a judge for self-review or in an educational setting. It could be useful for gaining insights into conflicts between judges who disagree about the same case. Statistical methods have been used previously for describing decision-making policies for each of these purposes,<sup>20-22</sup> but it would be difficult to apply statistical methods to actual commitment decisions,

due to the rarity with which petitions for commitment are rejected.

However, the impact-rating method's estimates of the importance of the patient characteristics do depend on which characteristics are most often influential in the set of cases being studied. For example, the Massachusetts judges reported the potential for violence as having a higher impact on their decisions to commit than the Colorado judge did. Could this be because the Massachusetts patients actually had a higher pro-

pensity for violence? The impact rating *per se* can not clarify this question, unless the judgments were made about the same set of cases. This occurs only when a panel of judges is reviewing a case, as in the appeals process, or when judges make hypothetical decisions about the same case. However, we have developed an additional procedure that involves comparing the impact rating with the judge's perception of the patient's characteristic. This approach promises to produce a general measure of its importance,<sup>9</sup> because the resulting measure of the relative influence of violence would be the same if applied, for example, to patients with low potential for violence or to patients with high potential for violence.

The impact-rating method can reveal only those influences that a judge is aware of and willing to acknowledge. The observed inconsistencies between the impact ratings and the statistically derived weights may reflect the workings of two levels of decision-making strategy—the explicit consideration, reflected in a judge's self-report, and the implicit, unconscious consideration, available only through statistical analysis of an individual judge's decisions.<sup>18, 23</sup> Paradoxically, for discovering the unconscious or unacknowledged influences, the objective, statistical analysis of the relations between patient characteristics and the decision may be the better method. For maximum educational benefit, the use of both a statistical method and the impact-rating method may be the optimal approach.

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