PSYCHIATRY AND BEHAVIORAL SCIENCES SECTION PRIZING WINNING PAPERS 1993

Betsy J. Bittman,[1] *M.D. and Antonio Convit,*[1] *M.D.*

Competency, Civil Commitment, and the Dangerousness of the Mentally Ill

REFERENCE: Bittman, B. J. and Convit, A., **"Competency, Civil Commitment, and the Dangerousness of the Mentally Ill,"** *Journal of Forensic Sciences*, JFSCA, Vol. 38, No. 6, November 1993, pp. 1460–1466.

ABSTRACT: The purpose of this study was to assess if a relationship exists between the nature of an individuals criminal charges and the finding of fitness among defendants evaluated at the Forensic Psychiatry Clinic servicing Manhattan. We examined the records of 354 defendants referred to the Forensic Clinic from the New York Criminal and Supreme Courts for a competency to stand trial evaluation. We reviewed their charges in light of the finding of competency. Incompetent defendants were most often accused of misdemeanors rather than felonies and of non-violent rather than violent crimes. Perhaps individuals who are thought to be psychiatrically disturbed get detained by the police on trivial charges so as to get them off the streets. Deinstitutionalization and civil commitment laws are considered as contributing factors and their impact is discussed.

KEYWORDS: psychiatry, competency, mentally ill

Deinstitutionalization has resulted in large numbers of chronically mentally ill patients being released into the community. Unfortunately, locally based community resources, preferred as the less restrictive method of treatment, were unable to care for the high volume of released mentally ill. In fact, it has been suggested that in the 1990's it is the criminal justice system, serving as the "street corner psychiatrist" [*1*], which may be responding to these more visible mentally ill.

There has been growing concern that the mental health and criminal justice systems are serving increasingly interdependent populations. Civil commitment laws may be an important factor in this multiply determined situation. Miller [*2*] has suggested another factor, economics: "Since promises of cost-effectiveness were major factors in the legislative adoption of deinstitutionalization, economics has obviously helped to shape the process from its inception . . . unlike the mental health system, jails and prisons have much less control over the numbers and types of persons whom they receive."

Civil Commitment Laws in New York and other states can restrict involuntary hospitalization to those mentally ill persons deemed by psychiatrists to be a danger to self or other. In New York, those mentally ill persons who refuse hospitalization and are not a danger to self or others may not be committed to the mental health system for treatment. Paradoxically, while the mental health system takes on the "dangerously" mentally ill,

it may be the "non-dangerous mentally ill" who are now being handled by the criminal justice system.

Many have reported on the high prevalence of mental illness in our nation's jails. In 1988, Arvanites [*3*] wrote about the increased number of competency to stand trial evaluations in relation to deinstitutionalization. In 1972. Abramson [*4*] coined the phrase, "criminalization of the mentally ill." He found that in San Mateo County, California, adjudications of incompetency to stand trial increased since a revised Lanterman—Petris-Short Act narrowed the requirement for involuntary hospitalizations by removing the "need for hospitalization" standard. In 1980, Dicky [*5*] found that mentally ill persons were increasingly being processed through the criminal justice system rather than the mental health system. Teplin, in 1984 [*6*] and 1985 [*7*] looked at police-citizen encounters and found that "for similar offenses mentally disordered citizens had a greater chance of being arrested than non mentally disordered citizens." Lamb [*8*], in 1987, found that defendants who were charged with minor offenses were, at arraignment, diverted into the mental health system.

Some authors have suggested [*9*] that the mentally ill commit more heinous crimes than the non-mentally ill. Lamb [*8*] found that 92% of defendants who were found incompetent to stand trial were charged with felonies and 62% with crimes of violence. Sosowsky [*10*], in 1978, found that former mental hospital patients had a markedly higher incidence of arrests for criminal behavior, including violent offenses, than persons without that history. However, many investigators have reported opposite findings. Cocozza [*11*], in his analysis of arrest rates, found that very few ex-mental patients were subsequently arrested for violent crimes. Teplin [*6,7*] in 1984 and 1985, found there was no significant difference in alleged offenses between mentally ill and non-mentally ill defendants.

A finding of "incompetent to stand trial" can serve as the defendant's early port of entry into the mental health system via the criminal justice system. New York case law requires that a person charged with a misdemeanor who is found incompetent to stand trial must have the charges against him dropped, and thus can be committed only through the civil commitment route. If not so committed, that person will not receive psychiatric treatment unless he signs into a hospital voluntarily. Defendants accused of a felony who are found incompetent to stand trial must be sent, bypassing civil commitment laws and questions of dangerousness, to an Office of Mental Health facility for treatment with the specific goal of restoration to competency.

The doctrine of incompetency to stand trial is philosophically based on the idea that it is fundamentally unfair to try someone who is mentally incompetent. This doctrine has its roots in English common law which held that a person must have the capacity to defend himself against his accusers at trial. In 1960, the United States Supreme Court, in Dusky v. United States [*12*], established the fundamental test for competence to stand trial; the defendant must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual understanding of the proceedings."

Just as a person can have a mental illness and still be competent to stand trial, a finding of competency to stand trial does not preclude mental illness. However, we think it quite useful to look at competency determination as an indication of the severity of current mental illness as it interferes with the defendant's specific ability to participate in the legal system. We suggest that similar difficulties may have compromised the individual prior to his arrest.

In this study, we hypothesized that in 1991 in Manhattan a large number of defendants charged with minor crimes would be found incompetent to stand trial. Identified for study were those defendants referred to the forensic psychiatry clinic by criminal justice personnel who were concerned that the defendants had mental health problems that might preclude competency to stand trial.

TABLE 1—*Demographic characteristics of court referrals for evaluations of competency to stand trial.*

Age	33 +/− 9 years	
Sex	Male	92%
	Female	8%
Race	White	17.0%
	Black	59.0%
	Hispanic	22.5%
	Other	1.5%

Methods

The source of this retrospective study was the Forensic Psychiatry Clinic, which services both the Criminal Court and the Supreme Court for the borough of Manhattan. The Forensic Psychiatry Clinic has been a site for much forensic research. Populations studied have included geriatric felons [*13*], women accused of arson [*14*], women accused of felonies [*15*], and sexual offenders [*16*]. In the present study, charts of male defendants referred for competency evaluations were reviewed to determine outcome of competency evaluations. Outcome (that is, competency or incompetency) was examined in relation to alleged offense. It must be emphasized that our focus was on those defendants referred to the clinic in whom a question had been raised, usually by lawyers or judges, as to whether they were having mental health problems that could affect their ability to stand trial.

At the time of this project, the first author was a Fellow in the New York University Medical Center Forensic Psychiatry program. The second author is an Assistant Professor in the department of Psychiatry at New York University Medical Center. Dr. Richard Rosner, M.D., as Director of the Forensic Psychiatry Clinic, was the on-site supervisor of the project. Review and authorization to proceed were obtained from the Research Committee of the Forensic Psychiatry Clinic. The study was funded, in part, by NIMH Grant Number MH4762.

Results

During January–December 1991, 470 defendants were referred to the clinic for competency to stand trial evaluations. 116 defendants were either "No show" or "Hospital

TABLE 2—*Penal laws of New York State: examples of felonies allegedly committed by subjects in study (n = 263).*

A Felony	Attempted murder/murder, 1st degree, 2nd degree
	Criminal possession of controlled substances, 1st degree
	Kidnapping, 1st degree
B Felony	Attempted rape/rape, 1st degree
	Robbery, 1st degree
	Burglary, 1st degree
	Criminal possession of weapon, 1st degree
	Arson, 1st degree
	Kidnapping, 2nd degree
C Felony	Attempted grand larceny, 2nd degree
	Burglary, 2nd degree
	Criminal possession of weapon, 2nd degree
D Felony	Attempted robbery
	Sexual abuse, 1st degree
	Forgery
	Criminal possession of weapon, 3rd degree
	Burglary, 3rd degree

TABLE 3—*Penal laws of New York state: examples of misdemeanors allegedly committed by subjects in study (n = 91).*

A Misdemeanors	Attempted assault, 3rd degree
	Criminal mischief
	Criminal tampering
	Petit larceny
	Theft of service
	Jostling
B Misdemeanors	Menacing
	Reckless endangerment
	Criminal trespassing
	Sexual abuse, 3rd degree
	Public lewdness
Violation	Disorderly conduct
	Harassment
	Loitering

referred." A defendant is hospital referred when it is felt that more observation is needed in order to determine competency. The remaining 354 defendants were seen by two psychiatrists on the staff of the Forensic Psychiatry Clinic who found the defendant either competent or incompetent to stand trial. 194 of these defendants, 55% of the total, were found competent to stand trial. 160 defendants, 45% of the total, were found incompetent to stand trial. Using the Penal Laws of New York State, the defendants' charges then were categorized as a violation, misdemeanor A or B, or felony A-E. The most severe offense is an A felony; the least severe offense is a violation.

The demographics of court referrals for competency to stand trial evaluations are presented in Table 1. Examples of felony charges can be found in Table 2 and of misdemeanor charges in Table 3.

A summary of the results of the chart review is presented in Tables 4 and 5. Results showed that, of defendants accused of a misdemeanor, 69% were found incompetent to stand trial and 31% were found competent to stand trial. The reverse was true for the felonies, where 37% were found incompetent to stand trial and 63% were found competent to stand trial. Alleged offense was then considered to be either Violent, Non Violent, Arson, or Drug-related. This was done because some misdemeanors are violent (for example, attempted assault) and some felonies are non violent (for example, forgery). 62% of defendants accused of a violent crime were found competent to stand trial, while 68% of those persons accused of a non-violent crime were found incompetent to stand trial. Arson is considered a violent crime and was looked at separately. 73% of those defendants accused of arson were found incompetent to stand trial. 69% of those accused of drug offenses were found fit to stand trial.

Discussion

In our study, persons found incompetent to stand trial were largely accused of misdemeanors rather than felonies, and of non-violent rather than violent crimes. These

TABLE 4—*Outcome of competency evaluation and type of crime (felony versus misdemeanor).*

	Competent	Incompetent
Felony	63%	37%
Misdemeanor	31%	69%

TABLE 5—*Competency and type of crime.*

	Competent	Incompetent
Violent	68%	32%
Non-violent	38%	62%
Arson	27%	73%
Drug-related	69%	31%

findings are consistent with other research showing that persons found incompetent to stand trial often have not been accused of violent or felonious crimes. In the Bronx, New York, during the years 1968–1975, for example, 8.2% of persons referred for competency evaluations were found incompetent to stand trial, and those individuals were more often charged with robbery, assault, money-related crimes and misdemeanors than any other crimes [*20*]. Similarly, in Virginia, Warren et al. [*17*] found that incompetent defendants were most often charged with a public order or trespassing offense as compared with a violent offense: "Opinions suggesting incompetency were offered for only five of 60 defendants charged with homicide (8%), eight of 89 defendants charged with sex offenses (9%), and three of 32 defendants charged with robbery (9%), as compared with 28 of 58 defendants charged with public order and trespassing offenses (48%). Incompetent defendants were 5 times more likely to have been charged with a public order or trespassing offense than a violent offense." However, of those evaluated in that study, relatively few defendants (17%), regardless of charge, were found incompetent to stand trial.

The above findings contrast with our Manhattan study, where, in 1991, of those evaluated, 45% of defendants were found incompetent to stand trial. Possible contributions to this discrepancy include effects of deinstitutionalization and differences in Civil Commitment Laws (CCL) or application of such laws across states. Perhaps fewer mentally disordered persons enter Virginia's criminal justice system because that state's mental health system offers a wider range of accessibility via CCL. Indeed, the CCL for the state of Virginia (and this has been the law since 1976) states that a person can be involuntarily hospitalized under Civil Commitment Statute if "(a)s a result of mental illness they pose significant danger to self or others or are so seriously mentally ill as to be substantially unable to care for self" [*17*].

Hiday [*18*] found that candidates for civil commitment in North Carolina were not arrested for the usual nuisance crimes of disorderly conduct, vagrancy, or loitering. Frequently, candidates were charged with aggravated assault, burglary, larceny, simple assault, fraud and traffic violations. "Candidates (for civil commitment) were noticeably absent in those most feared crimes of the stereotypical frenzied mad person: murder, rape, and arson." Like Virginia, in North Carolina a broadened interpretation of dangerousness to self or others allows for involuntary hospitalization [*19*]. 'Dangerous to himself' means that within the recent past: 1. The individual has acted in such a way as to show: I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and II. that there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself; or 2. The individual has attempted suicide or threatened

suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or 3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter. Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation."

In New York, Civil Commitment Laws make it more difficult to hospitalize someone against their will. Under New York State Mental Hygiene Law [*20*] "(E)mergency admission for immediate observation, care, and treatment of persons alleged to be mentally ill is appropriate for behavior which is likely to result in serious harm to himself or others. 'Likelihood to result in serious harm' to himself as used in this article shall mean: 1. Substantial risk of physical harm to himself as manifested by threats of or attempts at suicide of serious bodily harm or other conduct demonstrating that he is dangerous to himself."

Conclusion

Our data show that in Manhattan in 1991 there were a large number of defendants in whom a question had been raised as to competency to stand trial, who were processed through the criminal justice system and were found incompetent to stand trial (45%). Like Teplin [*6,7*], in our sample those defendants who were found incompetent to stand trial were not found to have been charged with more violent crimes than were those found competent to stand trial. Indeed, persons in our study who were found incompetent to stand trial were accused of fewer severe and violent crimes than were defendants found competent to stand trial. It is suggested that in Manhattan the combination of deinstitutionalization of the mentally ill and restrictive Civil Commitment Laws may encourage the processing of some mentally ill persons through the criminal justice system rather than the mental health system.

Acknowledgments

Our thanks to Dr. Richard Rosner, Ms. Ronnie Harmon, and Ms. Sadie Johnson for their much valued contributions toward the completion of this project. Special thanks to Dr. Kathy Nathan for her assistance editing the manuscript.

This study was funded, in part, by the National Institutes for Mental Health (MH4762).

References

[*1*] Teplin, L. A. and Pruett, N. S., "Police As Streetcorner Psychiatrist: Managing the Mentally Ill," *International Journal of Law and Psychiatry*, Vol. 15, 1992, pp. 139–156.

[*2*] Miller, R. D., "Economic Factors Leading to Diversion of the Mentally Disordered from the Civil to the Criminal Commitment Systems," *International Journal of Law and Psychiatry*, Vol. 15, 1992, pp. 1–12.

[*3*] Arvanites, T. M., "The Impact of State Mental Hospital Deinstitutionalization on Commitments for Incompetency to Stand Trial," *Criminology*, Vol. 26, No. 2, 1988, pp. 307–320.

[*4*] Abramson, M. F., "The Criminalization of Mentally Disordered Behavior," *Hospital and Community Psychiatry*, Vol. 23, No. 4, 1972, pp. 13–17.

[*5*] Dickey, W., "Incompetency and the Nondangerous Mentally Ill Client," *Criminal Law Bulletin*, Vol. 8, 1980, pp. 22–40.

[*6*] Teplin, L. A., "Criminalizing Mental Disorder. The Comparative Arrest Rate of the Mentally Ill," *American Psychology*, Vol. 39, No. 7, 1984, pp. 794–803.

[*7*] Teplin, L. A., "The Criminality of the Mentally Ill: A Dangerous Misconception," *American Journal of Psychiatry*, Vol. 142, No. 5, 1985, pp. 593–598.

[*8*] Lamb, H. R., "Incompetency to Stand Trial Appropriateness and Outcome," *Archives of General Psychiatry*, Vol. 44, 1987, pp. 754–758.

[9] Baver, W., "The Other Side of the Coin," *Illinois Medical Journal*, Vol. 137, 1970, pp. 158–161.
[10] Sosowsky, "Crime and Violence Among Mental Patients Reconsidered in View of the New Legal Relationship Between the State and the Mentally Ill," *American Journal of Psychiatry*, Vol. 135, No. 1, 1978, pp. 33–42.
[11] Cocozza, J. J., Melick, M. E., and Steadman, H. J., "Trends in Violent Crime Among Ex-Mental Patients," *Criminology*, Vol. 16, No. 3, 1978, pp. 317–334.
[12] Dusky v United States 362 U.S. 402 (1960).
[13] Rosner, R., Wiederlight, M., and Schneider, M., "Geriatric Felons Examined at a Forensic Psychiatry Clinic," *Journal of Forensic Sciences*, Vol. 30, No. 3, pp. 730–740.
[14] Harmon, R. B., Rosner, R., and Wiederlight, M., "Women and Arson: A Demographic Study," *Journal of Forensic Sciences*, Vol. 30, No. 2, 1985, pp. 467–477.
[15] Rosner, R., Wiederlight, M., and Wieczorek, R. R., "Forensic Psychiatric Evaluations of Women Accused of Felonies: A Three-Year Descriptive Study," *Journal of Forensic Sciences*, Vol. 30, No. 3, 1985, pp. 721–729.
[16] Packard, W. S. and Rosner, R., "Psychiatric Evaluations of Sexual Offenders," *Journal of Forensic Sciences*, Vol. 30, No. 3, pp. 715–720.
[17] Warren, J. I., Fitch, W. L., Dietz, P. E., et al., "Criminal Offense, Psychiatric Diagnosis, and Psycholegal Opinion: An Analysis of 894 Pre-Trial Referrals," *Bulletin of the American Academy of Psychiatry and Law*, Vol. 19, No. 1, 1991, pp. 63–69.
[18] Hiday, V. A., "Arrest and Incarceration of Civil Commitment Candidates," *Hospital Community Psychiatry*, Vol. 42, No. 7, 1991, pp. 729–734.
[19] North Carolina Senate Bill 58.
[20] Bluestone, H. and Melella, J., "A Study of Criminal Defendants Referred for Competency to Stand Trial in New York City," *Bulletin of the American Academy of Psychiatry and Law*, Vol. 7, No. 2, 1979, pp. 166–178.
[21] New York State Mental Hygiene Law Title B, Hospitalization of the Mentally Ill. Article 9.39 page 107–108.

Address requests for reprints or additional information to
Antonio Convit, M.D.
Director of Research
Kirby Forensic P.C.
Ward's Island, New York
New York 10035.