Research Note

JUDICIAL DECISIONS IN CIVIL COMMITMENT: FACTS, ATTITUDES, AND PSYCHIATRIC RECOMMENDATIONS

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Regression analysis is applied to civil commitment decisions to evaluate the importance of psychiatric opinion, externally visible "facts," and judges' attitudes. Indices were constructed of evidence of dangerousness, based on information presented at court hearings, and of judges' attitudes toward psychiatrists, mental hospitals, and the mentally ill, based on their responses to Likert type items. Additional variables include respondent's prior commitment status, diagnosis, court behavior, race, sex, age, and family caring. The analysis suggests that "facts" and psychiatric opinion but not judges' attitudes are significant influences on commitment decisions.

I. INTRODUCTION

The general view of adjudication is that it is a process whereby judges, perhaps influenced by their attitudes and values, apply the law to the facts of a case. However, when the question to be adjudicated is whether a person should be involuntarily committed to a mental hospital, many think that this model does not hold. Scholars who have studied the civil commitment process argue that judges often abdicate their role as neutral fact finders and defer to expert psychiatric opinion (Ennis and Litwack, 1974; Hiday, 1977b; Stier and Stoebe, 1979).

Recent statutory and judicial reforms of civil commitment suggest some dissatisfaction with the image of psychiatric dominance, for they mandate procedural and substantive

* This research was supported by Grant #5 R01 MH 30548 from the Center for Crime and Delinquency Studies of the Alcohol Drug Abuse and Mental Health Administration of the National Institute of Mental Health.

Thanks are owed to the judges, counsel, and clerks, without whose cooperation this study would not have been possible. I also wish to thank Elizabeth M. Suval, Richard Lempert, and Jeffrey C. Leiter for their insightful comments on an earlier draft of this paper and Richard T. Campbell for his assistance with the logit analysis.

changes designed to reduce reliance on psychiatric expertise and to increase the importance of the "facts." Respondents in civil commitment proceedings now have the due process rights of notice, speedy procedure, counsel, confrontation of witnesses, and regular court review. Also, most states require a finding of dangerousness as well as mental illness before a court may confine an individual to a mental hospital (McGarry *et al.*, 1981). This article is concerned with the effects of these reforms on judicial decisions in civil commitment cases. In it I examine the relative influence of psychiatric opinions and externally visible "facts" on court decisions in civil commitment cases, and I ask whether judges' attitudes toward psychiatrists, mental hospitals, and the mentally ill affect their decisions. To evaluate the relative importance of these factors, I analyze court records and testimony in civil commitment hearings in North Carolina, a state with "reformed" procedures.

II. THE SETTING

North Carolina's civil commitment law is representative of recent statutory reforms. It seeks to limit involuntary commitments to situations where people pose dangers to themselves or others and attempts to ensure due process. The commitment procedure can be started by any citizen (the petitioner) who knows a person (the respondent) who is mentally ill or inebriate and imminently[1] dangerous to self or others. Findings of fact must be made by (1) a magistrate or clerk who receives the petition, (2) a local qualified physician who examines the respondent in his county of residence, (3) a qualified physician at a treatment facility, and finally, at the top of the hierarchy, (4) a district court judge at a hearing. Any one of the four may terminate the commitment procedure by a finding of no mental illness or inebriety, or no imminent danger to self or others. The final district court decision is to be based on clear, cogent, and convincing evidence.

Time limits are placed on each stage so that the final finding of fact at the district court is to be made within ten days of the time the person is taken into custody. Respondents are given notice of the hearing and assigned a lawyer by the court if they are unable to retain private counsel. Those who have been brought to one of the four state mental hospitals for evaluation and treatment prior to their hearings are

[1] In October, 1979, after we completed our court observations, the North Carolina General Assembly removed imminent from dangerous as a criterion for commitment. N.C.G.S. § 122-58.2(1) (Supp. 1979).

represented by an attorney, who works full time representing all involuntary respondents at that hospital; other indigent respondents are represented by court appointed attorneys or public defenders. Respondents seldom hire private counsel, even when they can afford it.

III. THE SAMPLE

Between March and September, 1979, we sampled involuntary commitment respondents throughout North Carolina (N=1135). As in the population of all civil commitment respondents, the cases of most of our sample (81.5 percent) were heard in courts located in the state mental hospitals.[2] Almost all other hearings were heard in courts in counties with inpatient psychiatric facilities and regularly scheduled commitment hearings. The analysis reported here is based on 442 of the 482 sample cases which involved allegedly mentally ill adults who had formal commitment hearings at which witnesses appeared.[3] Because of missing data on one or more variables, 40 cases were lost to this analysis.

IV. METHODS

We collected data on our sample cases from courtroom observation, official case records, and interviews with judges. Using an extensive checklist, two observers at each hearing independently recorded any information that witnesses provided on behavior that might be considered dangerous.[4] After a day's hearings, the two observers reviewed their

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[2] Judges who preside over civil commitment hearings in state mental hospitals are, except in this respect, no different from other district court judges. They hear more civil commitment cases since their judicial districts contain state mental hospitals, and venue is in the judicial district of the hospital in which respondents are held pending their hearing, unless the respondent requests that the hearing be held in the district of the petition.

[3] The analysis excludes 514 cases which had no formal hearings. The court almost automatically signs papers ordering whatever facility psychiatrists recommend when they have already released the respondent or when they recommend release, outpatient treatment, or voluntary hospitalization and the family does not protest. The analysis also excludes 167 cases of inebriety which both psychiatrists and courts treat differently from mental illness.

[4] Following judicial attempts to define dangerousness, we recorded seven dimensions of behavior: (1) type of behavior (physical attack—such as shooting or trying to shoot someone; threat of physical attack coupled with some action—such as threatening suicide and buying rat poison; threat with no action—such as threatening suicide; attacking property—such as breaking windows with an ax; and unintentional harm—such as wandering in the middle of a busy highway); (2) frequency of behavior (number of times each behavior type occurred); (3) recency of behavior (days prior to petition or between petition and hearing); (4) weapon/means of harm; (5) seriousness (actual or threatened dangerous act could result in death, maiming, broken bones, or large lacerations); (6) object of behavior (self, others, or both); and (7) prior dangerousness (previous episode[s] of any type of dangerous behavior). See

checklist using notes taken during the hearings to assist in their review. Our observers also characterized respondents' predominant behavior in court. Researchers had access to official court documents to obtain basic demographic data and to the written affidavits of physicians which contained their recommendations and recorded indications of dangerousness.[5] In short, we were able to code the most salient aspects of the information that was available to the judges at the time they made their decisions. Following the court observation period, we interviewed the judges who had participated in our sample hearings and inquired into their attitudes toward the mentally ill, toward psychiatrists, and toward mental hospitals. The data are analyzed with the aid of regression analysis.[6]

V. MEASUREMENT

We distinguish the "facts" of the case from the "fact" of the physician's recommendation. We measure the former by evidence of dangerousness revealed by court testimony and by visible evidence of mental illness. Evidence of mental illness was measured by the respondent's court behavior. Where it was grossly inappropriate, such as falling asleep, walking around the courtroom, or talking constantly regardless of others' questions or ongoing testimony, this was noted by our observers.[7] Only 13.4 percent of respondents behaved inappropriately. Most respondents appeared to realize the seriousness of the proceedings and showed their respect by sitting quietly and attentively and by responding appropriately when questioned.

Hiday and Markell (1981) for a full description of the rationale for the development of the dimensions of dangerousness.

[5] Psychiatrists testified in only 127 cases; and generally they testified in detail only about respondents' dangerousness. Their testimony about respondents' mental illness tended to be limited to conclusory statements and was not usually questioned by counsel on cross-examination.

[6] Because the dependent variable is dichotomous, log linear or logit analysis might appear preferable to regression analysis. The log linear model, however, requires reduction of independent variables, which would preclude a test of the full effects of evidence of dangerousness since it is an interval measure. We did apply the logit model to our data and obtained the same results as reported here. Standard regression analysis in cases of dichotomous dependent variables is well represented in the literature. (See Berk and Loseke, 1981; Carroll and Mondrick, 1976; Feeley, 1979; Milner and Wimberley, 1979; 1980; Ryan, 1980-81.)

[7] Although grossly inappropriate behavior in court by itself is insufficient to determine mental illness, court officials commonly interpreted such behavior as indicative of serious mental illness. In all but 2.8% of the cases where psychiatrists stated in their affidavits that respondents were mentally ill, we have no indicator of mental illness other than inappropriate behavior. Allocating mental illness to the realm of psychiatric expertise, judges and attorneys tended to assume mental illness and to focus their questions on respondents' dangerousness.

Nine kinds of information which might be taken as evidence of dangerousness were identified, and an index ranging from 0 to 9 was created by giving a case a score of 1 for each type of information that was present in the case and

Table 1. Distributions of Variables

	Variable	Distribution
1.	Evidence of Dangerousness	
	0	8.5
	1	36.3
	2	5.6
	3	10.0
	4	11.6
	5	10.2
	6	8.5
	7	6.2
	8	2.7
	9	0.4
2.	Psychiatric Recommendation	
	0 (Release/Alternative)	14.7
	1 (Commit)	85.3
3.	Respondent's Status	
	0 (Recommitment)	13.3
	1 (Initial)	86.7
4.	Court Behavior	
	0 (Appropriate)	86.6
	1 (Inappropriate)	13.4
5.	Family Caring	
	0 (Absence of statement)	94.2
	1 (Statement)	5.8
6.	Mental Illness Attitudes	33.0[a]
		5.5[b]
7.	Mental Hospital Attitudes	28.1[a]
		4.4[b]
8.	Psychiatrist Attitudes	29.8[a]
		5.6[b]
9.	Race	
	0 (White)	65.7
	1 (Nonwhite)	34.3
10.	Sex	
	0 (Male)	50.5
	1 (Female)	49.5
11.	Age	41.4[a]
		17.8[b]
12.	Diagnosis	
	0 (Other)	56.1
	1 (Schizophrenia and Paranoia)	43.9
13.	Court Decision	
	0 (Release/Alternative)	43.4
	1 (Commit)	56.6

[a,b] The superscript "a" denotes a mean score and "b" denotes a standard deviation. All other figures are percentages.

https://doi.org/10.2307/3053591 Published online by Cambridge University Press

summing the scores for each case. The information compiled in this index includes: (1) physical attack to self or others, (2) one of four other dangerous acts (see note 4), (3) occurrence of the dangerous act(s) within one week prior to petition or between petition and hearing, (4) more than one occurrence of dangerous act, (5) more than one type of dangerous act, (6) use of lethal weapon/means, (7) actual or threatened dangerous act which could have serious result (see note 4), (8) prior dangerousness, and (9) facts of dangerousness, recorded on the final official psychiatric affidavit.[8] All but the ninth element were recorded only if mentioned in court testimony. As can be seen in Table 1, high scores on the index were infrequent. A majority of respondents (50.4 percent) had a score of two or less; and approximately three-fourths of respondents had a score of 4 or less.[9] This index does not measure the absolute or apparent dangerousness of a respondent, but it does to some degree measure the strength of the evidence of dangerousness presented to the court. The higher the score on this index, the more different reasons a court had to believe that a respondent was truly dangerous.

Psychiatric opinion was coded on the basis of the psychiatrist's recommendation at the hearing or, if a psychiatrist did not testify, the most recent psychiatric recommendation that appeared in the file. Recommendations to commit were coded 1, and recommendations for outright release or alternative treatment were coded 0. Psychiatrists recommended commitment for 85.3 percent of respondents and release/alternative for 14.7 percent. We also noted the psychiatrist's diagnosis. Schizophrenia and paranoia were coded 1, and other diagnoses were coded 0.

Indices of the judges' attitudes toward the mentally ill, toward psychiatrists, and toward mental hospitals were derived by factor analysis and item-total correlation from a large number of original and previously used Likert scale items pretested on a sample of law students. Mean index scores

[8] All elements of the dangerousness evidence index but prior dangerousness and the disclosure of facts relating to dangerousness on the psychiatric report are positively correlated with each other at the level of .22 or greater ($p<.001$). The latter is not significantly correlated with any other items; the former is significantly correlated with all items but item 5 at the 95% level of confidence or better. All items are significantly correlated with the total scale.

[9] For a detailed analysis of the amount and type of dangerousness among these respondents, see Hiday and Markell (1981). Generally, it was not high.

indicated that judges feel positively toward the mentally ill, psychiatrists, and mental hospitals; but there was enough variability within each index to produce reliability coefficients approaching .80 (Nunnally, 1967).[10] The respondents' race, sex, and age were also coded to measure any influence that these factors might have on how the judges viewed the cases.

In addition to these variables which relate to the evidence or possible judicial bias, we noted whether the hearing concerned an initial commitment for up to 90 days or whether it involved further commitment following a just completed term of involuntary hospitalization. Initial respondents who are committed tend to have relatively short lengths of stay in the hospital, averaging 17.4 days, well short of the legal maximum of 90 days (Hiday, 1977a). Since hospital psychiatrists release most committed patients "early," it is presumably only those who are perceived as being relatively unamenable to treatment, and thus as still dangerously mentally ill, who become recommitment respondents. Furthermore, judges may be influenced in their decisions by the fact that a previous finding of dangerousness sufficient to justify commitment has been made.

Finally, we created a dummy variable which indicated whether a family member had stated in court that the family wanted the respondent to come home.[11] A judge might take such a statement as evidence that those who knew the respondent best did not think he was dangerous or as evidence that the respondent, despite his proclivities, would not pose any dangers because he would be closely supervised and well cared for. The 28 cases in which a family member requested that the respondent be allowed to return home were coded 1 on this variable, which we call Family Caring, and the other cases were coded 0.

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[10] The index of attitudes toward mental illness has nine items (such as: "Most people have mental/emotional problems"; "Mental illness is nothing to be ashamed of"). Its range is 9-45, Alpha = .724. The index of attitudes toward mental hospitals has eight items (such as: "State mental hospitals provide custodial rather than therapeutic care"; "I think state mental hospitals are doing most patients some good"). Its range is 8-40, Alpha = .836. The index of attitudes toward psychiatrists has eight items (such as "Psychiatrists know a lot less about sickness than they let on"; and "Psychiatrists are needed very badly"). Its range is 8-40, Alpha = .723. Items of each index are scored 1 = strongly agree to 5 = strongly disagree. Positive items are reversed for scaling. The higher the index score, the greater the disagreement. For a full description of judges' attitudes, see Hiday (1983).

[11] Where such statements were made to the state/petitioner's advocate prior to a hearing, and where a family member stated in court the view that the respondent was not "dangerous now," the court tended to release the respondent without the taking of testimony in a formal hearing.

The dependent variable, court decision, was straightforward: involuntary hospitalization was coded 1, and release or some alternative treatment was coded 0.[12]

Table 2 presents the correlation matrix of our independent and dependent variables. The correlations between independent variables are generally low with probabilities $> .01$ except for the relationship between the indices that measure judges' attitudes and the correlations of evidence of dangerousness with prior commitment status, family caring, and age, and of age with prior commitment status and diagnosis. All correlations of the dependent variable, court decision, with the independent variables are significant at the .001 level except those involving judges' attitudes, diagnosis, and the respondent's demographic characteristics. The correlation with diagnosis reaches the .05 level.

Table 3 presents the results of our regression analysis, in which each independent variable was entered in stepwise fashion based on the amount of variance it explained over that left unexplained by the variables already in the equation.[13] All independent variables except those that measure the judges' attitudes and the respondents' demographic characteristics significantly affect court decision in the predicted direction. The evidence of dangerousness index makes the greatest contribution to explaining the variance in court decisions.

The respondent's prior commitment status and the psychiatric recommendation enter the equation next with approximately equal Beta weights, followed by court behavior, family caring, and diagnosis. Family caring is statistically significant even though there was little variance on this measure because very few families in those cases that proceeded to hearing requested that the respondent be returned home. That the judge did not commit the respondent in 23 of the 28 cases in which such a request was made suggests that this factor is a particularly powerful influence in those cases where it exists. Judges' attitudes add almost nothing to

[12] Alternatives to involuntary commitment are not frequently used. Commitment courts assigned alternatives to only 9.2% of initial mentally ill adult respondents and to 13.2% of recommitment respondents. The major alternatives were voluntary hospitalization (59.4%) and outpatient treatment at community mental health centers (28.1%). Among initial respondents, 42% were released outright, as were 17.4% of recommitment respondents.

[13] Although a stepwise procedure may be misleading in assigning joint variance to the most powerful predictor, no such problem exists with our data since little of the explained variance is shared. Only psychiatric recommendation, court behavior, family caring, and diagnosis show a decline from their initial to their final Betas and only to a slight degree. The Betas of the other independent variables increase slightly.

Table 2. Correlation Matrix of Independent Variables and Court Decision

		2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	Decision
1.	Evidence of Dangerousness	.06	.23*	.01	−.13**	.01	.00	.04	−.07	−.09	−.15**	.00	.32*
2.	Psychiatric Recommendation	—	−.07	.03	.05	−.02	−.02	−.04	−.04	−.03	−.09	.11***	.24*
3.	Respondent's Status	—	—	−.03	.04	−.01	−.00	.02	−.09	.05	−.13**	.04	−.16*
4.	Court Behavior	—	—	—	−.02	−.04	−.07	−.02	.03	.05	.09	−.06	.20*
5.	Family Caring	—	—	—	—	−.03	−.03	−.04	.05	.07	−.05	−.04	.19*
6.	Mental Illness Attitudes	—	—	—	—	—	.78*	.79*	.01	.09	−.05	−.01	−.06
7.	Mental Hospital Attitudes	—	—	—	—	—	—	.85*	−.03	.12***	−.03	−.08	−.04
8.	Psychiatrist Attitudes	—	—	—	—	—	—	—	−.04	.12***	−.05	−.07	−.06
9.	Race	—	—	—	—	—	—	—	—	−.03	−.10***	.07	.02
10.	Sex	—	—	—	—	—	—	—	—	—	.12***	−.04	−.04
11.	Age	—	—	—	—	—	—	—	—	—	—	−.23*	.03
12.	Diagnosis	—	—	—	—	—	—	—	—	—	—	—	.10***

* $p<.001$
** $p<.01$
***$p<.05$

Table 3. Regression Coefficients and Beta Weights In Full Equation Explaining Court Decision

Independent Variable	b	Beta
Evidence of Dangerousness	.07*	.35*
Respondent's Status	−.29*	−.19*
Psychiatric Recommendation	.28*	.20*
Court Behavior	.27*	.19*
Family Caring	−.29**	−.14**
Diagnosis	.09***	.09***
Age	.002	.07
Mental Illness Attitudes	−.01	−.08
Mental Hospital Attitudes	.02	.14
Psychiatrist Attitudes	−.01	−.11
Race	.04	.03
Sex	.01	.01

* $p<.001$
** $p<.01$
*** $p<.05$

the explained variance and have insignificant coefficients.[14] Taken together, the independent variables explain 27 percent of the variance in court decision (R = .52). Without the measures of judicial attitudes and information regarding the respondents' demographic characteristics, the remaining six independent variables still explain 25 percent of the variance (R = .50).

The amount of variance explained by our model is respectable compared with models of criminal justice decision-making (Feeley, 1979; Ryan, 1980-81). Had we been able to measure objectively the strength of the evidence of dangerousness, the proportion of variance explained would probably have increased. For commitment, the statute requires that evidence of dangerousness and mental illness be clear, cogent, and convincing; however, our evidence of dangerousness index does not take account of whether the evidence reached this required level of proof. Level of proof is crucial, but any measurement of it would always be open to criticism due to the subjective nature of the decision (Monahan, 1977).

VI. SUMMARY AND DISCUSSION

Our regression analysis of civil commitment decisions under the reformed North Carolina statute indicates that both the "facts" and psychiatric opinion significantly influence court

[14] When judges' attitudes are combined into a single index, they remain insignificant.

decisions in civil commitment cases, but it fails to support the view that judges' attitudes either toward the mental health system or toward the respondent's race, sex, or age influence decisions.

The failure of judges' attitudes to explain variance in the dependent variable may indicate only that the particular attitudes we've measured are not those most salient to the commitment decision. Perhaps judges' attitudes toward the dangerous mentally ill, involuntary hospitalization, and institutional psychiatrists would have greater explanatory power than those toward the more general mentally ill, mental hospitals, and psychiatrists. Or perhaps judges' attitudes toward commitment itself—whether they regard it as punitive or beneficial—and their views of their roles—whether as protectors of society or guarantors of justice—would have greater explanatory power (Hogarth, 1971). A judge may be sympathetic to the mentally ill or the dangerous mentally ill; but if he views commitment as punitive and if he sees his role as guarantor of justice, he may be less likely to commit respondents to involuntary hospitalization than if he views commitment as beneficial and his role as protector.

If the respondent's commitment status and the support offered by his family are viewed in another light, the regression analysis provides even stronger support for the traditional legal view of judicial decision-making. That is, one may interpret these variables, as well as the evidence of dangerousness index and court behavior, as indicators of "facts" which relate to the criteria for civil commitment: mental illness and dangerousness. Respondent's status as a recommitment case, rather than as an initial case, can be viewed as a measure of the chronicity of mental illness and dangerousness, just as prior incarceration is often used as an indicator of offender seriousness in criminal justice studies (Thomson and Zingraff, 1981). A family's statement that it wants the respondent home may be interpreted as an indicator of dangerousness in that the family is expressing its opinion that the respondent is no longer dangerous or not so dangerous that home care is out of the question. Accordingly, this measure is negatively associated with the dangerousness index. The psychiatric recommendation may be similarly interpreted. Like the willingness of family members to care for the respondent, it indicates an opinion of the respondent's mental illness and dangerousness. It differs from the family's view in that it is a professional judgment based on case-specific information

rather than long association. Because the court's rubber stamping of psychiatric recommendations has been a central issue in mental health law (Hiday, 1981), one should be cautious about treating it only as an indicator of the commitment criteria. However, the fact that the court only committed in 61.8 percent of the cases where the psychiatrist recommended commitment and 97.2 percent of these had behavioral evidence of dangerousness as well suggests that these recommendations may well have been used only for their factual bearing on the case, and they certainly did not control judicial discretion.

One must be careful in generalizing the findings of this study to other states. As the legal realists (Frank, 1949; Llewellyn, 1962) point out, the social milieu of a court influences its decisions. The social environment of other states may be different from that of North Carolina. Studies of sentencing suggest that the history, politics, and lifestyle of communities affect both judicial process and outcome (Eisenstein and Jacob, 1977; Ryan, 1980-81; Thomson and Zingraff, 1981). To these milieu factors we add the socio-legal environment. In North Carolina, the Court of Appeals has heard numerous civil commitment cases (25 in the two years surrounding our study). It has consistently overturned district court commitment decisions which did not follow the new procedures and which were not based on behavioral evidence of dangerousness (see, e.g., *In re Carter* and *In re Doty*). Since district court judges are sensitive to being overruled, they have tended to order commitment only when the new procedures were followed and the criteria were met.[15] In contrast stands Iowa. There, the appellate courts have not heard, and so have not overturned, lower court decisions which commit individuals in circumstances that do not meet the statutory requirements. With no appellate guidance, the lower courts in Iowa have ignored substantive and procedural changes intended to protect the rights of the mentally ill (Stier and Stoebe, 1979). Any study analyzing judicial decisions in one state must acknowledge the fact that the special nature of the socio-legal environment in that state may limit the generalizability of its results; and any study analyzing court decisions in more than

[15] In the first year after reform in North Carolina, a social milieu supporting commitment based on behavioral evidence of dangerousness did not exist (Hiday, 1977b). This milieu only gradually developed as the passage of the reform statute was followed by challenges to implementation practices, higher court decisions which interpreted the statute, and lower court acknowledgment of those interpretations.

one state should include the socio-legal environment as a variable in its model.

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https://doi.org/10.2307/3053591 Published online by Cambridge University Press