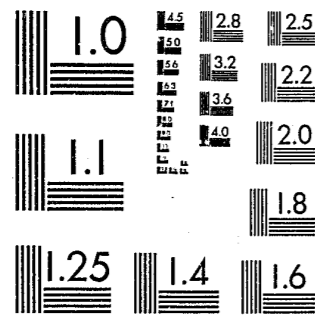


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Dangerous and Non-Dangerous Incompetent Defendants:

A Look at a Current Population

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Between September, 1971 and April, 1974, New York State's Criminal Procedure Law (CPL) mandated psychiatric predictions of dangerousness for all indicted felony defendants found incompetent to stand trial. These psychiatric assessments and ensuing judicial determinations dictated whether a defendant could be housed in a Department of Mental Hygiene (non-dangerous) or Department of Correctional Service facility (dangerous). These determinations were stopped in 1974 after the State Court of Appeals declared it unconstitutional to house anyone in a Correctional facility prior to conviction (Kesselbrenner v. Anonymous 33 NY2nd 161 [1973]). However, while these psychiatric evaluations of dangerousness were employed, an explicit opportunity was provided to probe some of the questions that continue to attract considerable attention concerning both the abilities of various professional groups to predict dangerousness and the impact that being labeled dangerous and incompetent may have on the criminal justice and mental health processing of these individuals.

Our current research began at the CPL's implementation, September 1, 1971. We selected for study all male felony defendants found incompetent during the next 12 months. This produced a cohort of 539 cases. In this presentation we will be discussing only 257 of these cases, those that were indicted and therefore had psychiatric and judicial determinations of dangerousness made. When we undertook this study one of the features that was most exciting was the expectation that this group of patients would provide a much more clinically relevant set of findings than could our Baxstrom research in that these individuals for the most part would be recently apprehended and younger, thus being more typical of other groups for whom estimations of dangerousness are most often made by psychiatrists.

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Data Sources

Let me very briefly describe the sources of the data that we will be presenting. The socio-demographic, diagnostic, and in-patient behavioral data were abstracted from clinical records at Correctional and Mental Hygiene facilities housing the patients. The criteria for dangerousness, previously reported (Steadman, 1974) and outside the scope of today's presentation, were taken from court psychiatric reports. Criminal histories and criminal activity subsequent to hospitalization were abstracted from reports of the NYS Division of Criminal Justice Services. In addition, we also have project interviews of most of the population and some community follow-up interviews which remain to be analyzed at this time.

The next three sections will very briefly report on the differences and similarities between the indicted defendants who were found dangerous (N=154 - 60% of indicted defendants) and non-dangerous (N=103 - 40%) by the psychiatrists on socio-demographic characteristics, criminal and hospitalization histories, patient careers through the mental and criminal justice systems on the instant offense, and some indicators of violent behavior in hospital and in the community after release.

Background Characteristics

The most striking feature of the data reported in Table 1 is the lack of differences between those found dangerous and those found not dangerous. Both groups were 30 and one half years old, physical dimensions were almost precisely the same, and education level averaged 9th grade in both. However, there were some slight differences in the proportions of various marital categories being found dangerous and substantial differences in the proportions of racial groups found dangerous with 55% of Whites dangerous, 58% of Blacks and

69% of the Hispanics. The final two background characteristics in Table 1, history of alcoholism and drug abuse show some variations, particularly with defendants with no history of alcoholism significantly less often found dangerous. Overall, there are few substantial differences in these background characteristics.

TABLE 1 about here

Moving to Table 2, one must again be struck with the similarities of the criminal and hospitalization histories of the two groups. Both had about an average of 4 prior arrests and 2 prior convictions. Considering only prior violent crime convictions, 60% of both those with some and those with none were found dangerous. There is a slight difference in those defendants with a history of juvenile delinquency adjudication, with 67% of those with an adjudication being seen as dangerous compared to 59% of those with none. Also, dangerous and non-dangerous defendants have similar scores on our Legal Dangerousness Scale that evolved from the Baxstrom work and did show some limited possibilities in predicting subsequent violent behavior. For prior mental hospitalizations, the average length of time was 24 months for the non-dangerous and 21 for the dangerous with 78% of the dangerous group and 80% of the non-dangerous having been previously hospitalized.

TABLE 2 about here

In sum, on socio-demographic, criminal and hospitalization histories, there are very few differences between those defendants found dangerous and not dangerous by these court psychiatrists.

Current Offense

Of all the data in this paper, the area in which the most significant

differences between the dangerous and the non-dangerous occurred was in the current, alleged offense. As we have reported previously (Steadman and Braff, 1975), there were major differences in the distribution of offenses for the entire group of 539 as compared to statewide felony arrest statistics, with significant overrepresentations of offenses against person among the incompetent defendants and significant underrepresentation of property and drug offenses. A similar significant difference occurred among those defendants found dangerous and non-dangerous by the court psychiatrists. Taking only Class A Felonies, 62 of the 75 so charged (83%) were determined dangerous by psychiatrists, where only 92 of the 182 (51%) of those charged with other classes of felonies were found dangerous. On this factor, and this one alone of all those we examined, were there substantial differences in the picture presented by the defendants to the evaluating psychiatrists.

This is the picture the defendants presented at the time of their psychiatric evaluations for dangerousness, let us turn to how they fared over the three and a half years of our follow-up.

Some Outcome Indicators

How, then, did these two groups which were so similar on everything except current alleged offense and psychiatric estimations of their dangerousness do? The answer is, just about the same. Whether one looks at length of time hospitalized as incompetent, disposition of CPL offense, number of subsequent arrests, seriousness of subsequent arrests, number of subsequent mental hospitalizations, violence while subsequently hospitalized, or current status, the dangerous and the non-dangerous were almost exactly the same. Neither was more violent than the other, either in hospital or in the community. Let us look at some of the specifics.

TABLE 3 about here

The dangerous defendants were hospitalized on the average 46 weeks before discharge in contrast to the shorter period of 37 weeks for the non-dangerous. However, for those defendants who were then transferred directly to other civil hospitals from the maximum security facilities where they were initially placed (rather than directly to court), the dangerous group remained 17 weeks and the non-dangerous 22 weeks. As for dispositions of criminal cases, 65% of the non-dangerous and 52% of the dangerous were convicted of felonies, 5% and 6% respectively were convicted of misdemeanors, 5% and 7% respectively were dismissed or acquitted, 5% and 2% were NGRI. Explaining the difference in felony convictions was the difference in cases pending with only 21% of the non-dangerous and 35% of the dangerous.

Turning to assaultive behavior, first in the maximum security facilities of initial placement, 36% of the non-dangerous group had at least 1 assault and 42% of the dangerous group did. The averages for the groups were 1.0 per person for the dangerous and .9 for the non-dangerous. Of the 19 non-dangerous patients subsequently transferred to civil hospitals before court, none were assaultive, while 4 of the 48 dangerous patients (8%) were assaultive.

As is evident in Table 3, rehospitalization and rearrest were common in both groups. Of those at risk, 54% of the non-dangerous and 49% of the dangerous were arrested at some time with the average number of arrests 1.3 and 1.1 respectively. Likewise, the proportion of the non-dangerous with subsequent hospitalizations was 44% and for the dangerous was 39%. As far as violent behavior related to either rearrest or rehospitalization, 16% of the non-dangerous and 14% of the dangerous were arrested at least once for a violent offense and 2 of the 36 rehospitalized non-dangerous (6%) had admissions precipitated by a violent incident and 4 of the 52 dangerous patients readmittances (8%) were associated with violent behavior.

The current status of the 257 patients as of the study's cutoff date of September 30, 1974 follows the pattern of these outcome measures. As Table 4 demonstrates, the locations of the two groups are practically the same. 51% of the non-dangerous and 51% of the dangerous were in the community. Also, almost the same proportion of both groups were incarcerated, 25.0% and 26.1%. This measure, as did practically all other outcome indicators, shows almost no differences between the outcomes of those seen as dangerous by the court psychiatrists and those determined to be not dangerous.

TABLE 4 about here

Discussion

This paper contains a multitude of numbers; most describing similarities between the backgrounds and subsequent behaviors of a group of incompetent defendants who psychiatrists were asked to differentiate on the basis of their probability of future violent behavior. These findings represent our very first analyses of these data. Considerable more work is required before any conclusions can be confidently drawn. At this time, there are two major impressions: (1) the major distinguishing background characteristic of the two groups is their current alleged offense and (2) there were very few differences in the incidence of subsequent violent behavior between those defendants estimated to be dangerous and those determined to be not dangerous.

We feel that there is an extremely wide range of issues to which our data on these incompetent defendants relate that cannot be even suggested in a presentation as brief as this one. Our intention here was to share with you some of our initial findings and to solicit questions that you might pose to be probed with our data on this patient population.

TABLE 1
BACKGROUND CHARACTERISTICS OF INDICTED MALE,
INCOMPETENT DEFENDANTS IN NEW YORK 9/1/71-8/31/72

	Not Dangerous (40.1)	Dangerous (59.9)	(N) (257)
<u>Average Age at Admission</u>	30.8	30.7	
<u>Race</u>			
White	44.6	55.4	(83)
Black	41.9	58.1	(117)
Puerto Rican	31.4	68.6	(51)
Other	16.7	83.3	(6)
<u>Marital Status</u>			
Never Married	45.0	55.0	(129)
Div., Sep., Widowed	36.7	63.3	(79)
Currently Married	34.1	65.9	(44)
<u>Average Education</u>	9th	9th	
<u>Average Height</u>	5-9	5-8	
<u>Average Weight</u>	165	162	
<u>History of Alcoholism</u>			
None	44.0	56.0	(141)
Some	34.2	65.8	(111)
<u>History of Drug Abuse</u>			
None	41.5	58.5	(135)
Some	38.7	61.3	(119)

TABLE 2
CRIMINAL AND HOSPITAL HISTORY OF INDICTED MALE,
INCOMPETENT DEFENDANTS IN NEW YORK 9/1/71-8/31/72

	Not Dangerous (40.1)	Dangerous (59.9)	(N) (257)
<u>Juvenile Delinquency</u>			
None	41.3	58.7	(208)
Some	33.3	66.7	(48)
<u>Average Prior Arrests</u>	4.0	3.6	
<u>Average Prior Convictions</u>	2.3	2.1	
<u>Violent Crime Convictions</u>			
None	40.5	59.5	(173)
Some	39.3	60.7	(84)
<u>Average Legal Dangerousness Scale Score</u>	4.6	4.7	
<u>Average Months in Mental Hospital</u>	24	21	

TABLE 3
OUTCOME MEASURES OF INDICTED MALE,
INCOMPETENT DEFENDANTS IN NEW YORK 9/1/71-8/31/72

	Not Dangerous (40.1%)	Dangerous (59.9%)	(N) (257)
Average # Weeks Hospitalized Immediately After Finding of Incompetency	37	46	
Average # Weeks in Civil Hospital After Transfer	22	17	
<u>Disposition CPL Charges</u>	(N=83)	(N=121)	
Guilty, Felony	65.1%	50.8%	
Guilty, Misdemeanor	4.8%	5.9%	
Dismissed, Acquitted	4.8%	6.8%	
NGRI	4.8%	1.7%	
Pending	20.5%	34.8%	
% Assaultive - Initial Incompetency Hospitalization (Average # per person)	36% (.9)	42% (1.0)	
% Assaultive - Civil Hospitals of Transfer (Average # per person)	0.0% (0.0)	8.3% (.2)	
% With 1 or more Rearrest (Average # per person at risk)	54% (1.3)	49% (1.1)	
% With 1 or more Rearrest for Violent Offense	16%	14%	
% Rehospitalized	44%	39%	
% Rehospitalized for Violence	6%	8%	
% Assaultive after Rehospitalization	18.9% (.6)	28.6% (.6)	

TABLE 4
STATUS OF STUDY POPULATION - 9/30/74

	Not Dangerous (N = 103)	Dangerous (N = 154)
Community	51.0 (49)	50.7 (70)
Incarcerated	25.0 (24)	26.1 (36)
Civil Mental Hospital	12.5 (12)	9.4 (13)
Hospital for Criminally Insane	10.5 (10)	9.4 (13)
Dead	1.0 (1)	4.4 (6)
TOTAL	100.0 (96)	100.0 (138)
(Unknown)	(7)	(16)

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