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CRIMINOLOGY

PSYCHIATRY, DANGEROUSNESS AND THE REPETITIVELY VIOLENT OFFENDER*

HENRY J. STEADMAN** AND JOSEPH COCOZZA***

One of the worst fears of the American public is the fear of being assaulted and murdered by a stranger. Although most earlier studies had found that homicidal attacks by strangers comprised only about twenty percent of all murders in the United States, recent data from New York City found that approximately one-third (419/1,592) of all homicides during 1975 were committed by strangers.¹ Surely one of the major factors responsible for continuing attempts to identify violent offenders who will be repetitive offenders has been the public's fear of the stranger attacking in the night. However, despite what may be a growing justification for such public fears, few leads are available for the identification, and therefore the prediction of such individuals in the research literature.

State legislatures have responded to the public's fears and demands about the inability of correctional programs to identify and reduce the rate of habitually violent offenders by increasingly relying on the psychiatrist in the criminal justice process. This trend in ideology and legislation appears to be associated with an assumption widely held by the public, legislators and many criminal justice administrators, that psychiatric training and perspective make psychiatrists particularly well suited to make inputs into the estimation of which offenders are the most likely to repeat. This assumption appears closely associated with the widely held belief that there is a strong, understood relationship

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¹ 33% *Slain in New York Don't Know Killer*, N.Y. Times, June 13, 1976, at 1, 60. The percentage of murders is probably even higher because 316 murders were accomplished by unknown assailants and Wolfgang notes that most of these murders were probably accomplished by strangers.

between mental illness and violent behavior. It is our intent here to examine these assumptions, to demonstrate their invalidity and to explore some of the implications of their invalidity.

PSYCHIATRISTS AS PREDICTORS OF FUTURE VIOLENT BEHAVIOR

There is actually very little literature that provides empirical evidence dealing with psychiatric predictions of dangerousness. Most of the works in this topic area are polemics, assertions of a faith in clinical judgement unimpeded by data, surveys of case law and summaries of the few empirical studies available. Also, for the most part, these discussions rely on studies which only indirectly address the question of the accuracy of such psychiatric predictions. For instance, studies reporting the arrest rates of ex-mental patients, recently summarized by Zitrin, Hardesty and Burdock,² are frequently cited as sources of empirical data. Such data, however, do not deal directly with questions of actual psychiatric predictions of dangerousness and their accuracy. Rather, they compare the level of arrests, usually with particular concern for violent offenses, of former patients with the general population or other groups of patients. Also, it is common to see studies of predicting violent behavior in the criminal justice system, especially the study by Wenk, Robison and Smith,³ cited as data relevant to these controversies. However, these latter works do not address the question of psychiatric predictions. They represent attempts to study amounts of violent recidivism and the feasibility of statistical prediction.

While there are at least four works that discuss criteria for prediction, but provide no validating data,⁴ there are only two studies that have exam-

² Zitrin, Hardesty & Burdock, *Crime and Violence Among Mental Patients*, 133 AM. J. PSYCH. 142 (1976).

³ Wenk, Robison & Smith, *Can Violence be Predicted?*, 18 CRIME & DELINQUENCY 393 (1972).

⁴ Bach-Y-Rita, Lion, Climent & Ervin, *Episodic Dyscontrol: A Study of 130 Violent Patients*, 127 AM. J. PSYCH. 1473

ined both psychiatric predictions of future violence and compiled longitudinal data.⁵ Our earlier work⁶ centered on gathering data for a four year period on a group of 967 patients detained in maximum security correctional mental hospitals who were transferred out of such institutions against psychiatric advice because of a 1966 United States Supreme Court decision.⁷ Despite the retention of these patient-inmates in such facilities for years because of fears of the danger they would pose in regular security facilities and in the community upon release, very little violent behavior was exhibited after their court-mandated transfers. Only twenty-six of the 967 (3%) were sufficiently violent to be returned to the maximum security institutions and only twenty-one percent were assaultive in the civil facilities or in the community during the four year follow-up. Also, twenty percent were arrested, but only two percent of the sample were convicted of assaultive crimes. There was little evidence to support the accuracy of psychiatric predictions of violence.

Kozol's study⁸ of dangerous sex offenders in Massachusetts concluded that psychiatrists working with an interdisciplinary team could accurately predict future violence. This conclusion was drawn from the thirty-five percent recidivism rate for violent offenses among those the court released against psychiatric advice compared to the eight percent rate of those treated and released with psychiatric approval. However, this "accurate" prediction still resulted in two incorrect assessments for every correct one. Also, there are a number of serious methodological problems in interpreting the data, particularly the differing periods at risk for the high and low recidivism groups.⁹

(1971); Marcus, *Encounters With the Dangerous Sexual Offender*, 18 CANADA'S MENTAL HEALTH 5 (1970); J. Ordway, *Experiences in Evaluating Dangerousness in Private Practice and in a Court Clinic*, in THE CLINICAL EVALUATION OF THE DANGEROUSNESS OF THE MENTALLY ILL 35 (J. Rappeport ed. 1967); A. McGarry, *Dangerousness and Civil Commitment in Massachusetts* (1974) (Paper read at the American Psychiatric Association Annual Meetings, Detroit).

⁵ H. STEADMAN & J. COCOZZA, CAREERS OF THE CRIMINALLY INSANE: EXCESSIVE SOCIAL CONTROL OF DEVIANCE (1974); Kozol, Boucher & Garofolo, *The Diagnosis and Treatment of Dangerousness*, 18 CRIME & DELINQUENCY 371 (1972).

⁶ H. STEADMAN & J. COCOZZA, *supra* note 5.

⁷ *Baxstrom v. Herold*, 383 U.S. 107 (1966).

⁸ Kozol, Boucher & Garofolo, *supra* note 5.

⁹ See Cocozza, *Dangerousness*, 15 PSYCH. NEWS 2 (1973). The low recidivism group (those predicted to be non-dangerous) were at risk as much as four years less than the high recidivism group.

This article will examine the results of a recent study which provided an unusual scientific opportunity to examine very specific psychiatric predictions of dangerousness, in terms of criteria employed and the accuracy of those predictions. This study provided a more policy relevant group than the Baxstrom patients of our earlier study who were older, long-term patients. In addition, in our present research we controlled the periods at risk for both study groups.

Methodology

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. A dangerous incapacitated person was defined in the statute as "an incapacitated person who is so mentally ill or mentally defective that his presence in an institution operated by the department of mental hygiene is dangerous to the safety of other patients therein, the staff of the institution or the community."¹⁰ The psychiatric assessments and ensuing judicial determinations dictated whether a defendant could be housed in a Department of Mental Hygiene (non-dangerous) or a Department of Correctional Service facility (dangerous). These determinations were stopped when the New York Supreme Court declared it unconstitutional to house anyone in a correctional facility prior to conviction.¹¹ However, while these psychiatric evaluations of dangerousness were employed, an explicit opportunity was provided for investigating the abilities of various professional groups to predict dangerousness.

Our research began with the CPL's implementation on September 1, 1971. We selected for study all male, indicted, felony defendants found incompetent during the next twelve months. This produced a cohort of 262 cases in which judicial decisions of dangerousness were necessary after incapacity was determined. In five of these 262 cases this determination occurred despite a psychiatric finding of fitness to proceed. Thus, there were 257 cases during this period for which psychiatric evaluations of dangerousness were submitted. In 154 of these 257 cases (60%) the indicted, incapacitated felony defendants were found dangerous by the examining psychiatrists. We obtained the court

¹⁰ N.Y. CRIM. PROC. LAW § 730.10(2) (McKinney 1971), revised in 1976 eliminating this provision.

¹¹ *People ex rel. Anonymous v. Waugh*, 76 Misc. 2d 879, 351 N.Y.S.2d 594 (Sup. Ct. 1974).

TABLE 1

Assaultiveness Among 1971 - 72 Indicted Male, Incompetent Defendants
In New York By Psychiatric Estimations of Dangerousness

| | Psychiatric Evaluation | |
|--|------------------------|----------------|
| | Non-Dangerous | Dangerous |
| % Assaultive only in Hospital (while incompetent or any mental hospitalization during follow-up) (a) | 31% (N=32) | 44%* (N=69) |
| % Assaultive only in Community (arrest for murder, manslaughter or assault or rehospitalization for assaultive behavior without arrest) (b) | 9% (N= 5) | 4% (N= 4) |
| % Assaultive in Both Hospital and Community (b) | 14% (N= 8) | 12% (N=11) |
| Total Assaultive (a) | 44% (N=45) | 54% (N=83) |

(a) Base equals total study group. For Non-Dangerous N=103 and for Dangerous N=154.

(b) Base equals those subjects in the community at risk. For Non-Dangerous N=57 and for Dangerous N=96.

* $\chi^2 = 4.44$ $p < .05$. All other differences are non-significant.

psychiatric reports on all 257 of these cases and attended fifty-five of their hearings.

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 dangerousness¹² were taken from the court psychiatric reports which required a statement as to whether or not the defendant was dangerous and, if dangerous, the specific reason(s) why. Criminal histories and criminal activity subsequent to the dangerousness determinations were abstracted from reports of the NYS Division of Criminal Justice Services.

Findings

As detailed elsewhere,¹³ although in the 257 cases studied the psychiatrists alluded to criteria such as delusional or impaired thinking and impulsiveness or unpredictability, they nearly as often referred to the current alleged offense and histories of assaults, arrests and hospitalizations as psychiatric justifications for expecting future violence. More importantly, out of the wide range of socio-demographic,

criminal, hospital history and diagnostic variables we gathered, only one was statistically significant in differentiating those defendants found to be dangerous from those found to be non-dangerous by the psychiatrists. This variable was "current alleged offense." Regardless of age, criminal history, mental hospitalization history, current diagnosis or anything else we measured, if the individual being evaluated was charged with a violent offense, there was a strong possibility he would be found dangerous.

Thus, the major discriminating factors used by the psychiatrists under pretrial psychiatric examination conditions was one which could have been employed by any other professional or layman from the defendants' case record. In these decisions on dangerousness, the psychiatrists exhibited little special expertise.

Much more important from the standpoint of psychiatric roles in the processing of the repetitively violent offender is the poor predictive accuracy attained by the psychiatrist using these criteria. Looking only at the total subsequent assaultiveness in Table 1, it appears that the psychiatrists may have been quite successful overall in their predictions of dangerousness. Among the dangerous defendants fifty-four percent were later assaultive compared to forty-four percent of the non-danger-

¹² See Steadman, *Some Evidence on the Inadequacy of the Concept and Determination of Dangerousness in Law and Psychiatry*, 1 J. PSYCH. & L. 409 (1973).

¹³ *Id.*

TABLE 2
Number of Subsequent Arrests for Violent Crimes 9/1/71 - 9/30/74
by Number of Prior Arrests for Violent Crimes

| Subsequent Arrests for Violent Offenses | Prior Arrests for Violent Offenses | | | | | | | | | | | | | |
|--|------------------------------------|-------|----|-------|----|-------|----|-------|---|-------|---|-------|----|-------|
| | 0 | | 1 | | 2 | | 3 | | 4 | | 5 | | 6+ | |
| | N | % | N | % | N | % | N | % | N | % | N | % | N | % |
| 0 | 67 | 94.4 | 31 | 91.2 | 14 | 82.4 | 16 | 76.2 | 4 | 80.0 | 6 | 85.7 | 4 | 36.4 |
| 1+ | 4 | 5.6 | 3 | 8.8 | 3 | 17.6 | 5 | 23.8 | 1 | 20.0 | 1 | 14.3 | 7 | 63.6 |
| TOTAL | 71 | 100.0 | 34 | 100.0 | 17 | 100.0 | 21 | 100.0 | 5 | 100.0 | 7 | 100.0 | 11 | 100.0 |

$$\chi^2 = 28.603 \quad P < .001 \quad C = .383$$

ous. However, this first impression is incorrect for two reasons. First, the difference is not statistically significant. This difference could have occurred simply by chance. Second, when the proportion of each group that was assaultive in the hospitals or assaultive in the community are examined separately, it is clear that the difference observed overall is a direct result of the psychiatrists' more accurate predictions for in-patient assaultive behavior. In fact, the difference between the thirty-one percent of the non-dangerous defendants and the forty-four percent of the dangerous defendants who were assaultive only in the hospital is statistically significant at the .05 level of probability. Thus, in this one type of environment the psychiatric predictions were somewhat accurate, although the psychiatrists still incorrectly identified as dangerous fifty-six percent of the group who were not assaultive in the hospital. On the other hand, in the community only four percent of the dangerous group were later assaultive in ways leading to rearrest or rehospitalization, but nine percent of the non-dangerous group were assaultive. Among those at risk in the community, fourteen percent of the non-dangerous were assaultive both in the hospital and in the community compared to twelve percent of the dangerous, once again showing no substantial difference in assaultiveness between those predicted to be dangerous and those predicted to be non-dangerous. Thus, in terms of the behavior being predicted at the time of the psychiatric evaluation (*i.e.*, assaultiveness) there was no overall expertise exhibited beyond what might be expected by chance.

It is interesting to pursue statistically what the accuracy of predictions of community violence in this group of incompetent felons could have been by systematically using the criterion the psychiatrists primarily depended upon—incidence of prior violent offenses. From the data already presented,

it is apparent that the seriousness of the current alleged offense was not predictive in the psychiatrists' clinical evaluations. There were simply no statistically significant differences in terms of any community outcome measures including subsequent arrests for violent offenses and total subsequent arrests by the seriousness of instant offense.¹⁴

Looking at the defendants' histories of violent arrests, the zero-order correlation between number of prior arrests for violent crimes and subsequent arrests for violent crimes is .278, and the zero-order correlation is .309 between prior violent crime convictions and subsequent arrests for violent offenses. However, these statistics mask a deceptively poor predictor for the majority of the subjects. If we examine Table 2 which displays prior and subsequent arrests as cross tabulations, the limited utility of the correlations becomes evident. As is apparent in Table 2, the repetitiveness of arrests for violent offenses becomes most discriminating in terms of subsequent arrests for violent crimes only among those with six or more offenses. Seven of the eleven subjects (64%) with six or more prior arrests were subsequently accused of violent crimes. This statistic compares with only seven of 105 (7%) of those with either none or one prior arrest for violent offenses and with ten of fifty (20%) of those with two to five prior arrests for these offenses. Thus, while such extreme repetitiveness might have been predictive in some way, few of any group being evaluated by psychiatrists would have this large a number of prior arrests for assaultive crimes as to have minimal usefulness in any evaluation.¹⁵ Furthermore, this variable is obviously not a psychi-

¹⁴ See Coccozza & Steadman, *The Failure of Psychiatric Predictions of Dangerousness: Clear and Convincing Evidence*, 29 RUTGERS L. REV. 1084 (1976).

¹⁵ In this group, for example, only 11 out of the 166 (7%) persons who were at risk of subsequent arrest had six or more prior arrests for violent crimes.

atric one. We have pursued it here to determine its utility if systematically applied, since the psychiatric predictions studied here employed this factor unsystematically in lieu of anything which was observably psychiatric. Certainly in moving towards the development of an actuarial prediction model or a model combining statistical and clinical procedures, the use of any one variable is quite inadequate. We have done so here only to test one hypothesis as it relates to our findings.

IMPLICATIONS

Despite statutory and procedural trends to the contrary, the data available suggest no reason for involving psychiatrists in the dispositional processes of violent offenders under the expectation of predictive expertise. While Rector may be accurate in his assessment that identifying persons who reliably can be predicted to be dangerous is "the greatest unresolved problem the criminal justice system faces,"¹⁶ this problem does not appear to be solved by the introduction of psychiatric assessment and prediction. These professionals appear to use a well accepted criterion of a recent episode of violence as their primary predictor although psychiatrists are relied upon in the name of some higher set of expertise that is thought to be otherwise unavailable to others who are or could be involved in decisions concerning the disposition, facility location, and release of the repetitively violent offender.

On a broader scale, it seems arguable that psychiatry is becoming more often involved in the disposition and treatment of the violent offender as a means to avoid more basic, and possibly more important, structural changes in society. If it is convenient to attribute continual, legally prohibited violent behavior (as opposed to war, sports and other forms of acceptable violence) to mental malfunctioning, then the general public is under no pressure, political or psychic, to evaluate the causes and consequences of violence as emanating from structural features of society that may derive from fundamental inequities in the distribution of resources. Instead, it is popular to assume that one must be crazy in order to be an habitually violent offender. This situation exists despite the extensive documentation of the lack of relationship between violence and mental illness.¹⁷

¹⁶ Rector, *Who are the Dangerous?*, 1 BULL. AM. ACAD. PSYCH. & L. 186, (1973).

¹⁷ See, e.g., Henn, Herjanic & Vanderpearl, *Forensic Psychiatry: Profiles on Two Types of Sex Offenders*, 133 AM. J.

It seems that the growing influence of psychiatry in the United States criminal justice system generally, and in the processing of the repetitively violent offender specifically, must be attributable to searching for a messiah or an easy answer, rather than a development warranted by documentable successes. If one were to apply any of the three evidentiary standards used elsewhere in the American legal system to the testimony of psychiatrists on the matter of estimating future violent behavior, their opinions could not be accepted in a court of law. As we and others have discussed, the conversion of the various evidentiary standards into scientific probability figures would be approximately .50 for more probable than not, .75 for preponderance of evidence and .95 for beyond a reasonable doubt.¹⁸ At this time there is no data in the psychiatric, criminological or sociological literature to support psychiatric predictions even at the .50 level. The data reported here support the "flipping coins" conclusion of Ennis and Litwack for psychiatric accuracy.¹⁹ It would seem advisable that expert testimony by psychiatrists be validated by empirically demonstrable abilities. The data that are most germane to their supposed expertise convincingly show no accuracy beyond that attainable by chance. At this time there is little to suggest that the employment of the dangerousness standard and its corollary of psychiatric predictions of future violent behavior are justified.

SUMMARY

As part of the legislative and criminal justice responses to continuing public pressures for protection from violence, particularly from strangers, the role of the psychiatrist within the criminal justice system has been expanding. Psychiatrists have increasingly been relied upon to make predictions as to the probability of future violent behavior by individuals. The use of psychiatrists in this role has developed despite an absence of evidence that they are equipped to perform adequately such activities. In fact, very little empirical data exists either to confirm or deny their expertise in this area.

PSYCH. 694 (1976); Steadman & Braff, *Crimes of Violence and Incompetency Diversion*, 66 J. CRIM. L. & C. 73 (1975).

¹⁸ See A. BROOKS, *LAW, PSYCHIATRY AND THE MENTAL HEALTH SYSTEM* (1974); A. STONE, *MENTAL HEALTH AND LAW: A SYSTEM IN TRANSITION* (1975); Cocozza & Steadman, *supra* note 14.

¹⁹ See Ennis & Litwack, *Psychiatry and the Presumption of Expertise: Flipping Coins in the Court Room*, 62 CALIF. L. REV. 693 (1974).

We have reported here on what was an unusual scientific opportunity in a natural setting to test the accuracy of specific psychiatric predictions of dangerousness for a group of indicted felony defendants who were found incompetent to stand trial. These data strongly suggest that under pre-trial examination conditions psychiatrists show no abilities to predict accurately future violent behavior beyond that expected by chance. The primary criterion employed by the psychiatrists was the current alleged offense rather than anything spe-

cifically psychiatric. Even had this criterion been systematically applied, which it was not, it was not found to be a powerful predictor by itself until an individual had a history of six or more prior arrests for violent crimes. These data and the absence of additional supporting documentation strongly suggest that there is little to be gained by utilizing psychiatrists in the processing of the violent offenders. Psychiatrists can demonstrate no special expertise in making predictions of future violent behavior.