The Differential Impact of Deinstitutionalization on White and Nonwhite Defendants Found Incompetent to Stand Trial

Thomas M. Arvanites

Previous studies have reported that state mental hospital deinstitutionalization has resulted in the processing of the mentally ill through the criminal justice system. Using pre- and postdeinstitutionalization samples of defendants found incompetent to stand trial (IST) selected from three states, this study examines changes in the mental health and arrest histories of white and nonwhite ISTs. These data reveal a significant increase in the number of nonwhite ISTs. Also, after deinstitutionalization, nonwhite ISTs had significantly more prior arrests and hospitalizations than white ISTs. There were, however, no differences in the offenses for which whites and nonwhites were arrested.

State mental hospital deinstitutionalization, once hailed as the Magna Carta of the mentally ill, has increasingly become the target of several criticisms. A major criticism is that deinstitutionalization has resulted in the "criminalization" of the mentally ill. Abramson,[1] Bonovitz and Guy,[2] Dickey,[3] Gudeman,[4] and Whitmer[5] have suggested that restrictions on civil commitment, the traditional mechanism used in response to the behavioral problems of the nondangerous mentally ill, will prompt institutional authorities increasingly to use arrest as an alternative. Before deinstitutionalization the mentally ill could more easily have been hospitalized involuntarily through civil commitments solely on the grounds that they were mentally ill and in need of treatment.

During the past three decades there has been a major policy shift in the care of the mentally ill in the United States. A series of treatment, legal, and social issues has resulted in an increased emphasis on community mental health. Nationally, the resident patient population decreased from 512,500 in 1950 to approximately 147,000 in 1978. Dein-

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stitutionalization is the term generally used to describe this decreasing use of state mental hospitalizations. For the purposes of this research, the term deinstitutionalization refers to revisions in involuntary civil commitment statutes. Shah[6] reported that within the past 20 years, 46 states have revised their civil commitment statutes to require a determination of dangerousness as well as an expanded set of procedural safeguards.

It would seem unlikely that the already overburdened criminal justice system would be willing to prosecute and confine these individuals in their overcrowded facilities. In order to gain treatment for the mentally ill who represent serious management problems for jail administrators, relieve overcrowding, and save money, local law enforcement officials may be anxious to transfer these individuals to state mental hospitals. One method of hospitalizing those no longer meeting civil commitment statutes is through commitments for incompetency to stand trial (IST). Arvanites[7] reported that the number of ISTs increased 20 percent between 1968 and 1978 while the number of total admissions declined 26 percent during the same period.

An examination of the nature and operation of the IST commitment clearly reveals its potential to emerge as an alternative to civil hospitalization. First, unlike the new civil commitment standards, IST commitments do not require a determination of dangerousness. Although both Steadman[8] and Roesch and Golding[9] report that a disproportionate percentage of ISTs are charged with violent offenses, incompetency commitments can be secured after an arrest for minor offenses. Dickey,[3] Gudeman,[4] and Geller and Lister[10] have reported significant increases in the number of criminal commitments to mental hospitals for misdemeanors and offenses such as disorderly conduct and disturbing the peace, after deinstitutionalization policies were implemented.

Second, although competency to stand trial is a legal judgment, the empirical literature suggests it is heavily influenced by psychiatric testimony. Steadman[8] and Pfeifer et al.[11] both report that when the psychiatrist concludes that the defendant is incompetent, the court concurs approximately 90 percent of the time. Abramson[1] suggests this reliance on psychiatric opinion permits the state to reintroduce the old "mentally ill and in need of treatment" standard.

Finally, the competency issue can be raised by the state as well as the defense. Although conclusive evidence on who raises the question of competency is lacking, Saran et al.[12] reported that the issue was raised by the state nearly 80 percent of the time. Once a defendant is found incompetent, several studies suggest, the length of hospitalization for treatment is significant. Steadman[8] reported that unindicted defendants in New York State were hospitalized an average of 59 weeks whereas indicted defendants averaged just over two years. Roesch and Golding[9] reported that defendants in North Carolina averaged 2.8 years of hospitalization. Thus, if the intent is to secure an involuntary hospital-

ization for the type of individual no longer meeting the civil commitment standards, the IST commitment certainly can be used as an alternative.

If commitments for incompetency to stand trial are expanding to include the nondangerous mentally ill who would have previously been committed civilly, there should be increases in the frequency of IST commitments, as well as certain identifiable differences in the criminal and psychiatric histories of defendants found incompetent pre- and postdeinstitutionalization. First, it is expected that the postdeinstitutionalization cohort will display significantly more prior state mental hospital admissions. This is based on the premise that prior to deinstitutionalization, the nondangerous mentally ill could have more easily been civilly committed, thereby reserving the IST commitment primarily for the serious offender processed through the criminal justice system. The inclusion of the nondangerous mentally ill, traditionally dealt with almost exclusively by the mental health system, should increase the total number of prior state mental hospitalizations. Further, since the nondangerous mentally ill can no longer be civilly committed, they are at an increased risk of arrest if they engage in any "disordered" or nuisance behavior. Thus, is it expected that the postdeinstitutional cohort will display more prior arrests, albeit for less serious offenses.

There is some evidence that this differential processing is occurring. Teplin[13] reported that those individuals who appeared mentally ill were more likely to be arrested then those who did not. Gudeman,[4] Geller and Lister,[10] and Melick and colleagues[14] have reported increases in the number of criminal commitments to mental hospitals over the past decade. In addition, Abramson,[1] Group for the Advancement of Psychiatry,[15] Dickey,[3] and Arvanites[7] have reported significant increases in the number of commitments for IST. Several have reported decreases in the seriousness of the offenses for which patients criminally committed were arrested.[3, 4, 10]

The issue of race and coercive social control has long interested social scientists. While studying the impact of deinstitutionalization on commitments for incompetency to stand trial, Arvanites[16] reported several variations by race. Most notable was the significant increase in the percentage of nonwhite ISTs. Before deinstitutionalization the majority of ISTs were white, whereas after deinstitutionalization nonwhite incompetent defendants comprised the majority. Laczko and colleagues,[17] in a predeinstitutionalization study of incompetent defendants, reported that the overwhelming majority (93%) were white. Steadman[8] and Roesch and Golding,[9] studying postdeinstitutional ISTs, reported that whites comprised only 33 percent and 53 percent of the samples, respectively.

Naturally, the question arises as to what may account for this increase in nonwhite incompetent defendants. The simplest explanation is that the increase is a function of changes in population demographics. An examination of pop-

ulation trends in the states studied clearly reveals that this is not the case. Although the percentage of the population accounted for by nonwhite males age 16 and over increased from 12.8 to 14.6 percent (+14.1%) between 1970 and 1980,[18] their percentage of all IST admissions increased from 34.0 to 51.4 percent (+51.2%) between 1968 and 1978. An alternative explanation is that the nonwhite mentally ill are now more likely to be processed through the mental health and criminal justice systems. The answer to this question requires more than a simple examination of census trends. This paper examines the changes in the mental health and criminal justice histories of white and nonwhite ISTs, pre- and postdeinstitutionalization, to determine whether there have been any changes in the processing of whites and nonwhites after deinstitutionalization.

Methods

Two samples of incompetent defendants, pre- and postdeinstitutionalization, were selected from three states: California, Massachusetts, and New York. Two factors influenced the selection of these states. First, only those states that maintained complete criminal and psychiatric data from years before deinstitutionalization could be considered, and only those states which provided access to these data could be selected. Second, to ensure an adequate sample size, it was important to include several states with large inpatient psychiatric populations. Approximately 12 percent of the nation's state mental patients were hospitalized in these three states.

Study subjects were randomly selected from all 1968 and 1978 admissions to state mental health facilities. The earlier year was one year before the adoption of the "dangerousness model" in California, variations of which were systematically adopted by other states thereafter. The latter year was sufficiently subsequent to deinstitutionalization to allow time for differential processing to be reflected in the histories of the postdeinstitutional IST defendants.

The sample was limited to adult males. Studies pre and postdeinstitutionalization have reported that the overwhelming majority (90%+) of ISTs are male.[8, 9, 17, 19] The sampling procedure was designed to select 50 defendants from each state for both years. In those states with fewer than 50 ISTs, all incompetent defendants were selected. The 1968 sample consisted of 144 defendants with an average age of 33. A total of 144 defendants with an average age of 31 comprised the 1978 sample. For each incompetent defendant, data were collected for all inpatient state mental hospitalizations and all arrests occurring before the target 1968 or 1978 admission. Also collected was the most serious criminal charge that resulted in the target IST commitment.

Finally, the total number of state mental hospital admissions as well as the number of IST commitments were collected for each state. Between 1968 and 1978 the number of IST commitments across these states increased from 1,371 to 1,646 (+20.0%) while the total num-

ber of admissions declined from 53,628 to 39,695 (−26.0%). An examination of population data reveals that the increase in IST admissions exceeded the increase in the population. Between 1970 and 1980 there was a 13.6 percent increase in the number of males age 16 and over.[18] More importantly, however, Arvanites[7] reported that the increase in IST commitments was positively related to the rate of deinstitutionalization. Deinstitutionalization was operationalized as the percent decrease in hospital census. Census figures on the last day of the respective years were used. Between 1968 and 1978 admissions declined 26 percent while census declined 63 percent. Virtually all deinstitutionalization legislation or policies prohibit either the initial admission or continued involuntary hospitalization (usually no longer than 72 hours) without a finding of dangerousness. Thus, although deinstitutionalization will affect admissions, the greatest impact will be on the length of hospitalization, which is better reflected in census figures. Across the three states there was considerable variation in the magnitude of deinstitutionalization. Massachusetts ranked first with a decrease of 77 percent, followed by New York (−65%) and California (−49%).

Results

As is evident in Table 1, there was a dramatic shift in the racial composition of the two IST cohorts. Before deinstitutionalization, whites accounted for significantly more of the ISTs (66% vs. 34%). Whites represented the majority in each of the three states; and in California and Massachusetts the difference was statistically significant. After deinstitutionalization, however, whites comprised slightly less than half (49%). Although the majority of ISTs in Massachusetts remained white, it should be noted that the proportion of nonwhites nearly doubled (16% to 30%). In California, there was a complete reversal. Whereas before deinstitutionalization ISTs were significantly more white, after deinstitutionalization they were significantly more nonwhite. Overall, the proportion of nonwhite ISTs increased from 34 to 51 percent (+51%).

Although this finding is noteworthy in and of itself, a more important question is whether there are any differences, other than race, in the type of individual

Table 1
Racial Characteristics of IST Defendants

State	1968		1978	
	% White (n)	% Nonwhite (n)	% White (n)	% Nonwhite (n)
New York	55.1 (27)	44.9 (22)	42.0 (21)	58.0 (29)
California	60.0* (30)	40.0* (20)	36.0* (18)	64.0* (32)
Massachusetts	84.4† (38)	15.6† (7)	70.5† (31)	29.5† (13)
Total	66.0† (95)	34.0† (49)	48.6 (70)	51.4 (74)

* $p < 0.01$.
† $p < 0.001$.

now being found incompetent. Prior state mental hospitalization histories are reported in Table 2. Although both the white and nonwhite ISTs displayed significantly more prior hospitalizations after deinstitutionalization, the nature and extent of that contact varied distinctly. Among the white ISTs, a significantly greater percentage of the postdeinstitutional IST defendants were previously hospitalized (67% vs. 49%). The average number of prior admissions (almost 3.0) remained the same. Among nonwhites, however, the proportion of defendants with prior admissions remained relatively stable (approximately 70%), while the average number of admissions increased from 1.67 to 5.40. Thus, it appears as though the whites have "caught up" with nonwhites in terms of the likelihood of previous hospitalizations. In terms of the average number of prior admissions, however, nonwhites now average more than whites. Whereas before deinstitutionalization whites were hospitalized slightly more than nonwhites (2.4 vs. 1.67), after deinstitutionalization nonwhites averaged almost twice as many as whites (5.4 vs. 2.9, $p < 0.05$).

Similar indicators of prior arrest histories are also reported in Table 2. With the exception of New York, where the postdeinstitutional cohort was more likely to have prior arrests, there were no statistically significant differences in the prior arrest histories of the two cohorts of white defendants. Although it

Table 2
Prior Hospitalization and Arrest Histories: Percent of Defendants with Priors and Average Number

State	White (n)		Nonwhite (n)	
	1968	1978	1968	1978
Hospitalizations				
New York	44.4* (12) x = 1.67	72.8* (16) x = 2.58	72.7 (16) x = 1.69†	69.0 (20) x = 6.40†
California	46.7 (14) x = 1.93	44.4 (8) x = 3.75	60.0 (12) x = 1.67†	68.8 (22) x = 5.18†
Massachusetts	55.3† (21) x = 3.19	74.2† (23) x = 2.91	71.4 (5) x = 1.60	76.9 (10) x = 3.90
Total	49.5* (47) x = 2.42	67.1* (47) x = 2.94	67.3 (33) x = 1.67†	70.3 (52) x = 5.40†
Arrests				
New York	55.6* (15) x = 4.00*	85.7* (18) x = 7.44*	63.6 (14) x = 5.07	72.4 (21) x = 6.71
California	73.3 (22) x = 7.32	83.3 (15) x = 7.07	75.0 (15) x = 6.33†	84.4 (27) x = 15.8†
Massachusetts	71.0 (27) x = 6.30	67.8 (21) x = 4.05	71.4 (5) x = 3.80	76.9 (10) x = 7.10
Total	67.4 (64) x = 6.11	77.1 (54) x = 6.02	69.4 (34) x = 5.44†	78.4 (58) x = 11.0†
Total sample (n)	95	70	49	74

*$p < 0.05$.
†$p < 0.01$.

was not statistically significant there was actually a decrease in Massachusetts. Overall slightly more (77% vs. 67%) of the white defendants were previously arrested, but the average number of times remained the same (approximately 6.0).

Among nonwhites there was a similar increase in the percentage with prior arrests (69% to 78%). The average number of prior arrests, however, more than doubled from 5.4 to 11.0. Although the only significant increase occurred in California, the average number in Massachusetts increased twofold and in New York increased by 1.6. It should be noted that in Massachusetts, the state with the greatest rate of deinstitutionalization, the average number of arrests for whites decreased from 6.3 to 4.0 but increased from 3.8 to 7.1 among nonwhites. Before deinstitutionalization approximately two-thirds of white and nonwhite ISTs had an average of six prior arrests. After deinstitutionalization, nonwhites had significantly more (11.0 vs. 5.0).

A second index of the ISTs' criminality was the nature of the offense for which they were arrested. The offense for which the mentally ill are now being arrested is a critical component of the criminalization hypothesis. Several researchers[3, 4, 10] have suggested that the nondangerous mentally ill are increasingly arrested on "fictional" charges such as disorderly conduct and then transferred to the mental health system through criminal commitments like the IST. Thus, it is crucial to investigate whether there have been any significant changes in the type of criminal behavior for which they are now being arrested. Criminal charges were classified into three categories: violent, crimes against persons, and minor offenses. In cases of multiple charges, only the most serious charge was used. The proportion of each cohort, by state, charged in each category is reported in Table 3. It must be noted that the categories are not exhaustive. That is, some defendants may be charged with an offense that does not fall into either category (e.g., auto theft or grand larceny).

It is clear from the data in Table 3 that there has been no significant decrease in the seriousness of criminal activity for which the postdeinstitutional cohort, white or nonwhite, has been arrested. To the contrary, there was a significant increase in the proportion of white defendants charged with a violent offense (28.4% to 43.1%). Although they were not statistically significant, there were increases in the percentage of nonwhite defendants charged with a violent offense, and both the white and nonwhite postdeinstitutional cohorts were more frequently charged with crimes against persons. At the state level, the only significant differences between the pre- and postdeinstitutional cohorts were found among whites in California. The postdeinstitutionalization cohort was more likely to be charged with violent offenses or crimes against persons and less likely to be arrested for a minor offense.

Racially, only one significant difference was detected. Before deinstitutionalization whites in California were significantly more likely to be arrested on

Table 3
Type of Arrest By State and Year

State	Types of Changes	Whites (n)		Nonwhite (n)	
		1968	1978	1968	1978
New York	Violent[a]	32.0 (8)	38.9 (7)	35.0 (7)	28.6 (8)
	Against Person[b]	68.0 (17)	55.6 (11)	45.0 (9)	46.4 (13)
	Minor[c]	4.0 (1)	5.6 (1)	15.0 (3)	21.4 (6)
California	Violent	28.0* (7)	56.3* (9)	36.8 (7)	46.4 (13)
	Against Person	40.0* (10)	68.8* (11)	47.4 (9)	64.4 (18)
	Minor	24.0* (6)	6.3* (1)	0.0 (0)	7.4 (2)
Massachusetts	Violent	26.0 (10)	38.7 (12)	42.9 (3)	58.3 (7)
	Against Person	34.2 (13)	48.4 (15)	42.9 (3)	58.3 (7)
	Minor	44.7 (17)	35.5 (11)	28.6 (2)	16.7 (2)
Total	Violent	28.4* (25)	43.1* (28)	37.0 (17)	41.2 (29)
	Against Person	45.4 (40)	56.9 (37)	45.6 (21)	55.9 (38)
	Minor	27.3 (24)	20.0 (13)	10.9 (5)	14.7 (10)
Total sample (n)		88	65	46	68

[a] Murder, rape, attempted murder/rape, assault.
[b] Above plus robbery, kidnapping, sex abuse, menacing.
[c] Criminal trespass, disorderly conduct, obscenity, criminal mischief, public intoxication, loitering.
* $p < 0.05$.

a minor charge than nonwhites (24% vs. 0%). At the aggregate level, white defendants after deinstitutionalization were slightly less frequently arrested for minor offenses than the earlier cohort (20% vs. 27%) whereas nonwhite defendants were slightly more likely to be arrested for minor offenses (14.7% vs. 10.9%) after deinstitutionalization.

Discussion

The revised civil commitment standards were viewed by many as increasing the rights of the mentally ill, thereby reducing the use of civil commitment as a form of coercive control. Critics have suggested that deinstitutionalization has resulted in the increased use of the criminal justice system to confine the mentally ill, who are often viewed as troublesome. This can only be determined by examining each type of criminal commitment for evidence that it is now absorbing the "type" of person previously committed civilly. The data presented here reveal significant increases in the number of commitments for incompetency to stand trial. More importantly, they clearly indicate that there are distinct differences in the racial characteristics as well as the mental health and arrest histories of the pre- and postdeinstitutional IST cohorts. Again, it must be emphasized that the increase in the number of ISTs as well as the increase in nonwhite incompetent defendants exceeded the increase in the adult male population.

In addition, there are distinct differences in the mental health and arrest histories of white and nonwhite IST cohorts. Whereas before deinstitutionalization white and nonwhite ISTs displayed similar prior arrest and hospitalization histories, after deinstitutionalization nonwhites had significantly more

state mental hospitalizations than did the white ISTs. The exact nature of the prior hospitalization histories requires further investigation. The fact that post-deinstitutional ISTs are now more likely to have more prior admissions does not necessarily mean that they have spent more time hospitalized. It is quite plausible that these individuals were hospitalized more often than others but for short lengths of stay (e.g., days or weeks). Thus, these individuals could have accumulated more hospitalizations but actually have spent less time hospitalized than those hospitalized for longer periods of time (e.g., months or years).

It would indeed be ironic if deinstitutionalization, designed to prevent involuntary hospitalizations, inadvertently resulted in some of the mentally ill being subjected to a more repressive form of hospitalization. Criminal commitments to mental hospitals have their own set of distinct consequences: they are usually more restrictive, which may interfere with treatment plans; criminally committed patients are often housed with violent patients regardless of their propensity towards violence; and approval for discharge must often be granted by the court as well as the hospital. It must be noted, however, that despite the increase in commitments of incompetency to stand trial, they still account for only four percent of state mental hospitalizations.[7] Thus, before concluding that deinstitutionalization has resulted in a more repressive form of hospitalization for the mentally ill, it must be noted that it is quite possible that these individuals represent a distinct minority and that a far greater number have benefited from the policy.

There is clearly no support for the claim that IST commitments are emerging as an alternative to civil commitment by expanding to include the nondangerous mentally ill previously subject to civil commitment. Although there is evidence that the mentally ill are increasingly arrested after deinstitutionalization, the offenses for which they are arrested are as serious, if not more serious, than before deinstitutionalization. One hypothesis is that after deinstitutionalization, the nondangerous mentally ill no longer meet civil commitment standards, thus reducing their opportunity for adequate treatment. They may be more at risk of decompensating to the point where their behavior does in fact become criminal than they are at risk of an IST commitment simply as an alternative to civil commitment.

The exact relationship between the changes in IST admissions and defendant characteristics documented here and the rate of deinstitutionalization requires further investigation. Although these changes clearly coincide with the deinstitutionalization process, significant correlations have not yet been established. Alternative factors such as changes in prison or jail populations need to be explored. It is quite possible that increases in the number of ISTs, particularly nonwhites, are the result of the mental hospital functioning as a backup to overcrowded correctional institutions. Regardless of the cause(s), it is clear that the processing of the mentally ill, particularly the nonwhite,

through the mental health and criminal justice systems has changed since deinstitutionalization.

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