

# The Criminal Defendant with Identified Mental Disorder

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Personal characteristics of criminal defendants including sex,<sup>1</sup> age and education,<sup>2</sup> and race<sup>3</sup> have been shown to relate to outcome of the defendant's contact with the criminal justice system. Whether mental disorder relates to outcome is uncertain, although there is anecdotal evidence to suggest that in some cases judges may be influenced by a history of mental disorder to acquit the guilty.<sup>4</sup>

We investigated whether identification of a defendant as having a mental disorder predicts outcome of the criminal justice process. Specifically, we ask whether defendants with identified mental disorder are more or less likely than other defendants to be found guilty, and if found guilty, more or less likely to be supervised.

Studies of the relationship between the criminal justice and the mental health systems have included research into police behavior toward the mentally ill,<sup>5</sup> arrest rate of mental patients,<sup>6,9</sup> and rate of mental disorders in prison populations.<sup>10-13</sup> We found only one study of mental patients in court that concluded the mentally ill in California were being inappropriately criminalized.<sup>14</sup>

We found two studies in which psychological characteristics of defendants were considered along with other variables in determining the outcome of contact with the criminal justice system.<sup>15,16</sup> Maslach and Garber<sup>15</sup> studied parole hearings and found that psychological assessments were the most important variable in determining who was paroled and who was not. In a study of sentencing, Konecni and Ebbesen<sup>16</sup> found that type of crime, offender's prior record, bail, and probation officer's recommendation related to sentencing; medical, psychological, and psychiatric information did not.

## Method

**The Setting** Research was conducted at the Cambridge District Court, an entry level court that arraigns 4,000 defendants annually. The court staff includes six judges and eight probation officers, each of whom has a case load of about 60. Located at the court is a Department of Mental Health psychiatric clinic staffed by two psychiatrists, two psychologists, and four social workers. The clinic provides the court on request with threshold determinations of competence and criminal responsibility, evaluations of mental illness and associated dangerousness, and treatment for persons on probation. The clinic also provides graduate training in psychology, social work, and child psychiatry.

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Prior to arraignment in this court, as in any Massachusetts District Court, each defendant is interviewed by a probation officer. A face sheet containing information about the defendant's financial and personal history, including past medical and psychiatric history, is completed. The purpose of this interview is to identify the defendant positively, and to determine whether he/she is eligible for a public defender. During the arraignment, the probation officer routinely presents to the judge the defendant's identity, financial status, past criminal history, and any other pertinent facts. This presentation could include any history of mental illness or substance abuse.

**Procedure** In the summer of 1980 a research associate of the court clinic (J.D.) was placed at the probation officers' station in the courtroom. She observed consecutive arraignments of all defendants for three months. She documented the processing of each defendant through the district court until the case was concluded, or until January 1, 1981. She had access to the defendant's past record and probation file.

For each defendant we recorded age, sex, race, marital status, current criminal charges, prior criminal record, prior probation record, history of psychiatric disorder, alcoholism or drug abuse, and/or treatment for these conditions as known to the court, and type of lawyer, that is, public defender, private attorney or *pro se*.

Outcome of each case was recorded and coded as guilty, not guilty, still pending, referred to Superior Court, jury rights exercised in district court, filed no finding, default/capias, hospitalized and dismissed not guilty, or committed to hospital for question of competence to stand trial and/or criminal responsibility. Disposition was recorded as dismissed, probation, suspended sentence, sentenced to house of correction, or hospitalized. Thus, defendants could be categorized two ways: first, as guilty or innocent, and second, whether they were incarcerated or released to the street and with what type of supervision.

## Results

**Description of Cases** The demographic characteristics of the 924 cases are shown in Table 1 along with the percentage of cases in each demographic group found guilty. These percentages are based only on those cases in which a verdict was reached; cases still pending are excluded, so that the percentage of guilty plus not guilty equals 100 in each demographic group. Our sample is predominantly single, white, male, with a prior criminal record, and without identified mental disorder. However, 30 percent of the sample had some identified mental disorder: 12 percent psychiatric, 12 percent alcoholic, and 6 percent drug related. There is a marked variability in the proportion found guilty among different demographic groups, for example 50 percent of men v. 20 percent of women were found guilty; 60 percent of defendants with identified psychiatric disorder v. 41 percent of control defendants were found guilty.

At the conclusion of the study each case was coded as verdict reached or as still pending. Seven hundred sixty-seven cases (84 percent) had reached a ver-

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Table 1. Defendant Characteristics Related to Verdict (N=924)

Defendant Characteristic	Number and Percent of Cases	Percent Found Guilty
Sex		
Male	819 89	50
Female	95 11	20
Marital status		
Single	611 66	52
Currently married	142 15	34
Formerly married	139 15	43
Unknown	32 04	
Race		
White	653 71	46
Black	187 20	51
Hispanic	36 04	47
Unknown	48 05	
Criminal record		
Prior record	559 60	54
No record	359 39	28
Unknown	06 01	
Counsel		
Private	209 23	44
Court appointed	464 50	72
<i>Pro se</i>	110 12	40
Unknown	141 15	
Mental disorder		
None	639 69	41
Psychiatric	115 12	60
Alcohol	114 12	61
Drug	51 06	83
Unknown	05 01	

dict. Verdict reached was coded as guilty or not guilty. Guilty included 349 guilty and 12 filed, for a total of 361 cases (47 percent) coded guilty. Not guilty included dismissed 355, not guilty 59, continued without a finding 51, and one not guilty by reason of insanity, for a total of 406 cases (53 percent) coded not guilty. Of the 16 percent who had not reached a verdict, half were awaiting jury trial or had been referred to superior court, and half had defaulted.

The five most common charges were operating under the influence,  $n=79$ , trespass after 9 p.m.,  $n=56$ ; disorderly,  $n=54$ ; larceny over \$100,  $n=42$ ; and assault and battery with a dangerous weapon,  $n=38$ .

**Verdict and Defendant Characteristics** To determine whether there were significant relationships between defendants' personal and criminal history and the verdict reached, we used the statistical technique of stepwise logistic regression.<sup>17</sup> In large samples this technique permits a determination of whether a categorical variable such as guilty/not guilty is significantly related to other variables, such as age, prior criminal record, or mental disorder.

A logistic regression was performed testing whether verdict was related to each of the following variables: age, sex, marital status (currently married v. not); race (white or black); counsel retained (counsel or *pro se*); identified mental disorder (psychiatric, alcohol, drug, or none); criminal charge in 10 categories (alcohol related, drug related, order violation, for example, disturbing the peace;

Table 2. Predicting Guilt from Defendant Characteristics: Results of Logistic Regression

Variable	Improvement Chi-Square	d.f.	P-Value	Odds Ratio
Prior record	44.18	1	.0001	2.62
Charge	45.85	9	.0001	
Motor vehicle		1		11.6
Sex offense		1		-4.2
Mental disorder	10.91	1	.001	2.23
Marital status	7.69	1	.006	1.52
Sex	9.92	1	.002	3.58

misdemeanors except order violations, motor vehicle, felony not v. a person, that is, a crime in which no violation of body integrity was likely such as breaking and entering; felony v. a person, for example, robbery; sex violations, for example, rape, indecent exposure, and other.\* We used the version of logistic regression described in BMDP, 1979.<sup>18</sup>

The variables significantly related to verdict are shown in Table 2. Prior criminal record, charge, marital status, sex, and identified mental disorder are all related to a finding of guilty. Each of these variables significantly affects the probability of a finding of guilt, even in the presence of the others. The goodness-of-fit chi-square is significantly improved by the addition of each of the five variables. As no other variable produced significant improvement, the logistic regression was stopped at this point.

Table 2 also shows odds ratios. Each odds ratio in the table is a statement of the relative likelihood that a person in one category will be found guilty when compared with persons in the other category.<sup>19</sup> Thus, men are 3.58 times more likely to be found guilty than women, and persons with any identified mental disorder are 2.23 times as likely to be found guilty as are persons without identified mental disorder. Only two charges had odds ratios greater than two to one: motor vehicle violations were 11.6 times more likely to be found guilty, and sex charges were 4.2 times *less* likely to be found guilty when compared with all other charges.

There were 29 sex related offenses: nine felonies, all rapes, and 20 assorted misdemeanors, for example open and gross lewdness, lewd and lascivious behavior. Eight of nine rape cases were never prosecuted. Twenty of 29 misdemeanors went to trial. Of these 19, five were found guilty, 10 were continued without a finding and four were not guilty.

Age, race, and legal counsel did not relate to verdict. The apparent relationship of counsel to verdict observed in Table 1 disappeared in the logistic regression analysis. Further analysis showed that there was a confounding between public v. private counsel and having or not having a prior criminal record. Clients of public defenders were more likely to have a prior criminal record, and this difference accounted for the apparent difference in verdict related to type of counsel.

\*A listing of specific charges in each category is available from the authors on request.

Table 3. Predicting Disposition of Guilty Defendants From Defendant Characteristics: Results of Logistic Regression

Variable	Improvement Chi-Square	d.f.	P-Value	Odds Ratio
Counsel	25.52	1	.0001	8.49
Mental Disorder	13.46	1	.0001	3.27
Race	6.12	1	.01	1.01
Charge	2.94	1	.09	1.25
Race × Charge	4.73	1	.03	6.42

To test for the presence of further parameters we performed an additional logistic regression. We introduced interactions between the five variables found to be related to verdict in the first regression analysis. No interaction made a significant contribution to the model.

Because of our interest in mental disorder we performed separate logistic regressions comparing each specific category of mental disorder with no disorder. Each category was significantly related to verdict. Persons with identified psychiatric disorder were 2.18 times as likely to be found guilty as persons with no identified disorder. Identified alcohol defendants were 2.08 and defendants with an identified drug problem were 2.09 times as likely to be found guilty as persons with no identified disorder.

**Disposition** Disposition was examined for those 767 cases that had reached a verdict. Of these 767, 699 (92 percent) were in the community, 70 percent with no court supervision, and 30 percent under some court supervision, for example, probation or continued without a finding. Forty-two cases (5.5 percent) were in the house of correction, and 14 (1.8 percent) were hospitalized.

We used logistic regression to determine whether there was a relationship between defendant characteristics and disposition for those defendants found guilty. Since there were fewer cases, it was necessary to recode our 10 categories of charges into two groups in order to have enough cases in each cell. "More serious" charges were defined as felony not v. a person, sex crimes, and crimes v. persons. "Less serious" charges were defined as our other seven previously described categories. The dependent variable was disposition defined in two categories: being in the community with no supervision v. any other disposition, that is, in the community supervised, incarcerated, or hospitalized. Independent variables were sex, marital status, race, prior record, counsel (counsel v. *pro se*), and mental disorder (any v. none). The results are summarized in Table 3.

Table 3 shows that mental disorder, having no lawyer, and the interaction of charge and race are all significantly related to being supervised or institutionalized after a finding of guilty. Although race and charge both contribute significantly to the model, the odds ratios reveal that they make their contribution primarily through the significant interaction of race and charge. The odds ratios show that blacks are no more likely than whites to be supervised, and that persons convicted of a serious charge are only 1.25 times more likely to be supervised than persons convicted of a less serious charge. The odds ratio for charge × race

shows that blacks convicted of a more serious charge are 6.42 times more likely to be supervised than all other defendants.

The significant interaction between charge and race among guilty defendants is related to the fact that guilty blacks were more often (26/42 or 62 percent) than guilty whites (64/145 or 44 percent) charged with serious crimes. Furthermore, blacks convicted of serious crimes were more likely to be incarcerated (5/26, or 19 percent) or supervised (20/26, or 77 percent) than whites convicted of serious crime, 5/64, or 8 percent of whom were incarcerated and 37/64, or 58 percent of whom were supervised.

Defendants with any mental disorder are 3.27 times more likely to be supervised than are control defendants, and defendants without a lawyer are more than eight times as likely to be supervised than those with a lawyer. A second logistic regression comparing private with public counsel demonstrated that this variable was not significantly related to disposition. It was not possible to analyze the relationship between disposition and each type of mental disorder separately because there were too few cases.

## Discussion

Persons identified as having a history of mental disorder are more likely to be found guilty than are other defendants. This finding holds for all three categories of mental disorder: psychiatric, drug, and alcohol. Furthermore, when mentally disordered defendants are found guilty they are more likely to be supervised by the court or incarcerated than are other defendants.

Consistent with previous reports we found that being male, not currently married, and having a prior criminal record all predict a finding of guilt. After a guilty finding those with mental disorder, or who defended themselves, or who were blacks convicted of serious crimes were more likely to be supervised or incarcerated than were other guilty defendants.

The relationship between verdict and personal characteristics could reflect differences in how often different types of persons actually commit the crimes with which they are charged. We have no data that either support or refute this, but this explanation is not entirely satisfactory since it would imply, for example, that police are more likely to arrest and charge innocent women than innocent men. Real differences in guilt or innocence may be part of the explanation, but we believe that our findings also reflect judicial response to particular characteristics of defendants.

When interpreting these results it is important to remember that this is a study of defendants identified as having a mental disorder at the time of arraignment. This information is available on a probation face sheet at arraignment but is not available to the trier of fact if the case goes to trial. It is available to the judge in all cases at the time of disposition.

We do not know how mental disorder affects outcome; we only know that it does. The mentally disordered defendants may have behaved differently than the control defendants, or the court may have responded to them differently inde-

pendent of any behavior of theirs. The data provide no basis for distinguishing between these two explanations for the observed association between guilt and identified mental disorder. Probation officers or district attorneys may have been influenced by this history in making bail recommendations, or the judge may have considered it in setting bail.

We speculate that our major findings reflect a judicial tendency to rely on a *parens patriae* or police protection theory when dealing with a mentally disordered defendant. Judges want to protect the mentally ill who may be at risk of harm to themselves and to protect society from the alcoholic who they believe will repeatedly commit crimes. We believe these concerns affect verdict and possibly sentencing.

Judges' apparent readiness to find persons with mental disorders guilty may be an example of a "halo" effect.<sup>20</sup> A halo effect occurs when one characteristic of a person being evaluated (in this case mental disorder) serves as an organizing principle that colors the evaluator's entire view of the person.

Alternate explanations for the association of mental disorder and a finding of guilt are: some proportion of these defendants are sufficiently impulsive that the evidence against them is particularly clear and convincing, or these defendants more often admit their guilt. To decide between these competing explanations of our major findings, a more detailed clinical study of individual cases would be required.

Our findings provide no support for the current concern that the mental health system is being used as a frequent escape hatch by criminals seeking to avoid incarceration. There was only one not guilty by reason of insanity verdict in this entire sample. Clearly, identified mental disorder rarely implies lack of criminal responsibility.

Defendants charged with motor vehicle charges were found guilty more often than defendants charged with other crimes. We believe this finding reflects two facts: the evidence supporting many of the motor vehicle arrests was particularly clear and convincing, and a finding of guilty most often led only to a fine. Motor vehicle charges led to a fine in 75 percent of cases, more than for any other charge.

Defendants charged with sex crimes were less often found guilty than were other defendants. This reflects two contrasting outcomes: rapes that were never prosecuted and misdemeanors that were continued without a finding or not guilty in 75 percent of cases. The fact that judges continue so many of these cases without a finding after a trial in which the facts were established suggests that judges are choosing not to convict in these cases.

## **Conclusion**

Our study has some relevance to a current controversy in forensic psychiatry. Members of the civil libertarian mental health bar have repeatedly argued that patients' rights have not been adequately protected by rules and procedure governing civil commitment and involuntary treatment. They argue that psychiatrists

are too ready to make decisions that patients might better make for themselves, and that procedures should be developed that protect patients from arbitrary psychiatric decision making. In opposition, psychiatrists have argued that patients need help that they often refuse because of their disorders.

Which side is correct is not at issue here. What is relevant is that there has been almost no study of how responsible decision makers other than psychiatrists deal with the mentally ill. Our findings indicate that judges appear to behave similarly to psychiatrists. Their decisions regarding the mentally ill appear to be based, in significant part, not on formal rules but on their own judgment as to the best interests of these defendants. Our data suggest that judges, like psychiatrists, consciously or not, are applying discretion with a good measure of paternalism in making decisions for the mentally ill.

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