THE THEORY AND PRACTICE OF INVOLUNTARY COMMITMENT IN TWO OKLAHOMA COUNTIES

By

MATTHEW E. WATSON

Bachelor of Arts

Knox College

Galesburg, Illinois

1972

Submitted to the Faculty of the Graduate College
of the Oklahoma State University
in partial fulfillment of the requirements
MASTER OF ARTS
May, 1975

THE THEORY AND PRACTICE OF INVOLUNTARY COMMITMENT IN TWO OKLAHOMA COUNTIES

Thesis Approved:

Robert D. Summers, Jr.
Thesis Adviser

Thomas D. Kellom

Richard L. Dick

N. N. Durham
Dean of the Graduate College

ACKNOWLEDGMENTS

I would like to express my appreciation to Professor Robert L. Spurrier for his efficient and helpful direction of this project and his aid in finding an interesting thesis topic early in my graduate career. Professor Clifford A. L. Rich deserves much credit for his aid as a careful and critical reader of this thesis and for two years of help as my adviser. I would also like to express my thanks to Professor Thomas G. Kielhorn for his help with methodological problems throughout the project. Finally, I would like to thank my wife for her constant understanding and support during the preparation of this thesis.

TABLE OF CONTENTS

LIST OF TABLES

CHAPTER I

INTRODUCTION

Statement Of The Problem

Three hundred thousand people are admitted to mental hospitals in the United States annually. Of these, eighty to ninety percent are involuntarily committed.[1] The Fourteenth Amendment to our Constitution guarantees that no person shall be deprived of liberty by any state without due process of law. When a state forces a person to enter and remain in a mental hospital, the patient loses his personal liberty. This deprivation is particularly severe in the case of the mentally ill, since the patients are normally committed for an indeterminate stay in a mental hospital.

Medically the indeterminate stay is desirable since the patient needs to remain in the hospital until his problem is solved, and no court or doctor can decide how long the cure will require prior to commitment. In practice this can mean years of life without liberty for the mental patient.

This point is well illustrated by a recently reported case.[2] If a visitor to the Greenlee County, Arizona courthouse examined old

---

[1] R. Postel, "Civil Commitment: A Functional Analysis," 38 Brooklyn Law Review 3,4 (1971).

[2] D. Wexler, S. Scoville et al., "Special Project: The Administration of Psychiatric Justice: Theory and Practice in Arizona," 13 Arizona Law Review 1, 2 (1971).

files he might discover that a nineteen year old Mexican-American woman was committed in 1912. It was reported to the local sheriff that the girl was acting irrationally. Upon investigation the girl was taken into custody by the sheriff, and commitment proceedings were begun. Two doctors who examined the girl reported that she had not made any threats to commit suicide or murder. They described her as happy, having a tendency to laugh and sing. She also wanted to dance. Reportedly she could not sit still. The doctors were concerned since the patient had been known in the past as a quiet person.[3]

The doctors concluded that the young woman was insane, but they felt her condition was temporary and she would recover. The cause of the illness was reported as "bathing in cold water at menstrual period." On this basis the local probate judge signed a commitment order, and she was sent to the territorial asylum in Phoenix, Arizona on January 23, 1912. She was to remain there until she recovered from this temporary illness. The next order in the patient's file was a request by the Phoenix hospital asking that the patient's funds be used to help pay her expenses during her involuntary commitment. This order was dated May 26, 1969, and when the Arizona Law Review article telling about the case was written in 1971, the patient was seventy-eight years old.[4]

There was no evidence to indicate that the young lady committed in 1912 was a threat to anyone. She was apparently committed for her own good. This seems hard to justify if medical knowledge was not

---

[3] Ibid.

[4] Ibid.

available to help her. On the other hand, if the medical knowledge was available, a great injustice was done if she was forced to enter the hospital and the treatment was not applied. In the case Wyatt v. Stickney a United States District Court opinion provides a good explanation of the unfairness of prolonged commitment without treatment.

> When patients are...committed for treatment purposes they unquestionably have a constitutional right to receive such individual treatment as will give each of them a realistic opportunity to be cured or to improve his or her mental condition. Adequate and effective treatment is constitutionally required because, absent treatment, the hospital is transformed "into a penitentiary where one could be held indefinitely for no convicted offence."[5]

Admittedly, this case shows an extreme possibility. Other less dramatic cases can be developed to show the abusive nature of commitment proceedings that often take place with little concern for due process. As we review some examples, it should be remembered that these people might have been saved days, months or even years of improper confinement if they had enjoyed the same rights we grant persons in criminal proceedings.

One major problem is that concepts such as mental illness are extremely vague and are hard to apply under our legal system.[6] Legislators cannot define a precise set of facts that constitute mental illness and have allowed medical experts to define mental illness on a case by case basis. For example a mentally ill person is defined in Oklahoma as a person "afflicted with a mental illness to such an

---

[5]Wyatt v. Stickney, 325 F. Supp. 781, 784 (M.D. Ala. 1971).

[6]Supra. note 1 at 14.

extent that he is incapable of managing himself and his affairs."[7] No separate definition is given as to what constitutes mental illness. Thus, mental illness is whatever the doctors say it is. This situation has led David B. Wexler to argue that psychiatrists can place almost anyone in the mentally ill category for any reason he wants.[8] Our legal system has not provided protection against possible abuse by psychiatrists. This, of course, makes most of us subject to involuntary commitment since we may not be given a chance to establish our sanity during the commitment proceeding. Thus, without procedural safeguards, the potential for injustice is great.

This is illustrated by the fact that problems in marriages may lead to questionable involuntary commitment. In one case a wife filed an application for divorce and an affidavit for the commitment of her husband on the same day without telling him. He was picked up by two policemen at his home. They came with their lights flashing and told him that he needed to come to the station to settle something involving an old accident. He was taken to a mental hospital. The resident on duty told him he could make one phone call. He called his wife since he did not realize she had arranged for his commitment. She responded, "Oh, that is terrible that you have been picked up. I shall take care of everything." She did not do anything to help him and the hospital held him for two weeks before realizing nothing was wrong with him.[9] Under a system that provided adequate protection

---

[7] 43A Okla. Stat. sect. 3 (Supp. 1970).

[8] D. Wexler, "The Therapeutic Justice," 57 Minnesota Law Review 293, 294 (1972).

[9] T. Szasz, Law, Liberty and Psychiatry 62, 63 (1963).

for the patient's rights this would have been discovered much sooner.

One New Jersey woman was held for three years in a state mental institution, against her will, after the hospital's staff had judged her sane! Even though they felt she was sane, she was forced to stay in the hospital because she did not have any family, and they feared that she might have to go on welfare.[10] This reasoning seems absurd for two reasons. First, she was already on welfare in the sense that the state was supporting her in the mental hospital. Second, she was a registered nurse and had been working as such in the hospital. She probably could have found related work after discharge from the hospital. Since the legal reason for her commitment no longer existed, she should have been released. It has been suggested that she was not released because her work as a nurse was valuable to the hospital.[11] The injustice in the situation is obvious.

Another remarkable example of unjustifiable involuntary commitment is provided by Thomas Szasz.

> Only recently...a 34-year old Falls Church, Virginia, trash collector was held in the Southwestern State Hospital for the Criminally Insane in Marion, Virginia. He had previously been taken into custody upon suspicion of murdering the Carrol Jackson family when Peter Herkos, an alleged "mind reader" with "clairvoyant" power, pointed to him as a suspect. Mr. Herkos was invited to this area and had his expenses paid by a psychiatrist on the staff of St. Elizabeth's Hospital, Dr. Regis Riesenman. Without any evidence to make a formal charge, the police, acting upon the recommendation of Dr. Riesenman, who in turn relied upon the recommendation of the "mind reader" for his evaluation of the case, picked up the unfortunate trash collector for questioning. After it was determined he was not the murderer he was not released, but instead, was subjected to civil commitment proceedings. Again Dr. Riesenman entered the case. He even sat as sole psychiatrist

---

[10] Ibid.

[11] Ibid.

> of the three-member hastily convened board which adjudged that the man be committed to a mental hospital for the criminally insane...Parenthetically, a man named Melvin Rees has since been convicted in Virginia for murdering two other members of the family...The fact remains, however, that the commonwealth of Virginia succeeded in depriving a citizen of his liberty under mental health auspices for no reason which could stand the scrutiny of impartial and rational investigation, and in a manner which did violence to every factor considered essential to due process of law.[12]

This passage again makes our point clearly. Improper commitment can occur and has occurred when we do not allow those accused of being mentally ill the rights associated with due process.

Injustice has also occurred when others, such as "hippies," have been declared mentally ill and committed because they have unusual life styles.[13] Some psychiatrists consider members of the John Birch Society to be paranoid to the point of mental illness.[14] The investigation of Major General Edwin Walker's mental health in 1962 was a widely publicized example of using mental health laws against political extremists.[15] General Walker had the resources to fight back and win. Unfortunately, many of us would not have those resources under the same circumstances.

Commitment based on political belief or life style alone is very dangerous. Certainly, under our Constitution we cannot support commitment based on such broad definitions of insanity. Procedural safeguards are needed to protect those citizens whom a psychiatrist might call insane using such a broad definition.

---

[12] Id. at pages 64, 65.

[13] Supra. note 8 at 295.

[14] Ibid.

[15] T. Szasz, Psychiatric Justice 178 (1965).

Our society allows the murderer and rapist certain rights to insure that only the guilty are convicted. We even allow the petty criminal who faces a short jail term certain basic procedural safeguards. Does it not seem reasonable to allow those accused of being mentally ill procedural safeguards to help prevent the sane from being subjected to an indeterminate sentence in a state mental hospital?

Many psychiatrists reject this position and are in favor of simple commitment procedures that do not provide many due process rights.[16] In testimony before the Senate Committee on the Judiciary Dr. Jack Ewalt, a representative of the American Psychiatric Association, testified:

> From a medical view, the worst features of the commitment laws of the past...are requirements such as these: that the patient must be given "notice" that he is to be committed; the insistence that the patient appear personally in court with the consequent exposure of his problems to the public; the acceptance of a lay judgment as to the degree of illness as occurs, for example, in a jury trial...If judicial procedures must be brought into play at all, the court should have discretionary power to eliminate notification to the patient and not require the patient to be present in person at the hearing.[17]

This view of the commitment process assumes that the doctors will always represent the best interest of the patient and as a result legal safeguards are unnecessary.

These arguments might be acceptable if we had a much more perfect way of knowing, prior to hearing, that the person is, in fact, mentally ill and needs help. In reality we are dealing with imperfect human

---

[16] J. Katz et al., Psychoanalysis Psychiatry and Law 468 (1967).

[17] Id. at pages 467, 468.

beings who are administering an under-financed system. We have seen cases of people being committed without a good reason for commitment. It is hard to justify the reasoning that due process rights should be ignored to provide for simpler hearings that will not upset patients. There seems to be an even greater danger that people will be wrongfully committed.

The danger that we are attempting to illustrate, that people may be committed without a proper reason, brings us to our probelem. Generally, we are interested in whether safeguards built into Oklahoma's commitment process are adequate to protect defendants from improper commitment. We will break this problem down into two specific questions. First, does Oklahoma law provide adequate statutory protection to make involuntary commitment of the sane unlikely? Here we will examine the law to see whether it is adequate theoretically to assure that the rights of those accused of insanity are protected.

Our examination of the law will indicate what rights the legislature felt should be protected at involuntary civil commitment proceedings in Oklahoma, but it is important that we go beyond this to determine how the law is actually used. Thus our second question moves us from a theoretical discussion to an empirical investigation of whether commitment proceedings in Tulsa and Payne Counties apply state law in a way that makes the commitment of the sane improbable.

To find the answers to our problems we will deal with three more specific problems on both the theoretical and practicable levels. First, does the defendant have the right to be represented by counsel at his commitment hearing? Second, was the defendant given the

opportunity to be present at his commitment hearing? Third, was the defendant afforded the right to have his sanity determined by a jury? These questions provide the focus of our emphasis as we try to determine whether adequate protection is provided for those accused of insanity under Oklahoma law both in theory and practice. Chapter two will provide a more detailed analysis of the importance of these three rights.

Hypothesis

In our examination of Oklahoma's involuntary commitment statutes and their application we expect to find a general lack of protection of the rights of those accused of insanity. This means that we expect to find a lack of protection in one or more of the areas mentioned above since we are arguing that exclusion from the hearing, lack of counsel or denial of a jury trial increases the probability of improper commitment. These expected results suggest answers to the two main questions developed from our problem.

The first question was, "Does Oklahoma law provide adequate statutory protection to make involuntary commitment of the sane unlikely?" In response to this question we expect to find that adequate protection is not provided under Oklahoma law to make improper commitment unlikely. Thus on the theoretical level we expect to find that Oklahoma law is not written in a way that guarantees the protection of the three basic civil rights that we mentioned earlier. "Do involuntary commitment proceedings in Tulsa and Payne Counties apply state law in a way that makes the commitment of the sane improbable?" We answer this problem with the hypothesis that involuntary commitment proceed-

ings in Tulsa and Payne Counties do not apply Oklahoma law in a way that adequately protects the rights of those accused of insanity.

Methodology

Our first problem will be to determine whether Oklahoma law provides adequate statutory protection against improper commitment. Oklahoma law will be judged adequate if it insures that patients have the opportunity and aid necessary to present a legal defense against the charge of insanity. The problem here is not complicated since legal sources are available that give a complete picture of what Oklahoma civil commitment law is. Our data will consist of Oklahoma statutes and state appellate court cases interpreting those provisions. Analysis will consist of comparing the law as it is to what we feel the law should be to protect adequately the rights of those accused of insanity.

The methodological problems become greater when we move to our second area of concern and try to discover how the law is applied. To find out how the law is applied we will use a combination of research techniques. These will include non-participant observation and interviews with officials involved in the commitment process. Non-participant observation provides a useful method of obtaining a wide variety of information concerning the application of state law. Interviews will be used to provide supplemental information to verify the accuracy of observations and to obtain information when observation is either impossible or undesirable.

Non-participant observation is an appropriate method for our purposes since it will allow the researcher to discover how the legal

process works. Without some experience with actual commitment hearings it would be difficult to design an observation form that yielded the maximum amount of useful information on the commitment process. Thus, observation of actual commitment hearings will be essential to the early phases of research and observation form development. If the entire project were completed without any direct observation of commitment hearings, important problems might be ignored. The point is that if we do not have a good idea how commitment hearings are organized and administered, we may miss entire areas of observation that are significant.

Once we have decided to use an observation technique, we must consider when and where to use it. As our hypothesis states, we will consider the commitment process in Tulsa and Payne Counties. Payne and Tulsa Counties were selected for this study because they are conveniently located and it is economically feasible for the researcher to attend hearings in both areas. In Payne County, commitment hearings were observed between March 22, 1974, and May 22, 1974. Because of the relatively small number of commitments in Payne County, an attempt was made to obtain information on all hearings held during the period of observation. Observations took place in Tulsa County between August 21, 1974, and March 21, 1975. Since Tulsa County normally had one or more commitment hearings each day while the Probate Court was in session, a sample of Tulsa cases was observed. Since the observer could only attend hearings in Tulsa on certain days, the hearings to be attended were selected on this basis. This procedure provided a reasonable basis for generalizations about the commitment process in the two counties during the time of study.

One problem associated with observation studies is that the presence of the observer may alter the behavior of those being observed.[18] It can be argued that the effect of the observer will be small, since people seem to get used to observers if they do not appear to be a threat to the group. One study found that the effect of the observer on small groups was reduced considerably after three periods of observation.[19] It is also important that the hearing members not know any details about what the goals of the research are. If specific aims are not presented, those being observed cannot know how to react to give the researcher a desired impression.[20]

The method used to record information gathered from observation is also a problem closely related to our above discussion. We must record observations accurately, but at the same time we must avoid making the recording so obvious that it constantly reminds participants in the hearings that they are being watched or tells them what the observer is looking for. One recommended method to reduce the group's feeling that it is being watched is to remember some information for recording immediately after leaving the group that is being observed.[21] This strategy seems particularly appropriate for our needs. To facilitate recording the information a form was developed to fill out after each commitment hearing. This form insures both that all

---

[18] E. Webb et al., Unobtrusive Measures: Nonreactive Research in the Social Sciences 51 (1968).

[19] C. Selltiz et al., Research Methods in Social Relations 233, 234 (1964).

[20] D. Forcese and S. Richer, Social Research Methods 146 (1973).

[21] Ibid.

relevant questions are considered after each hearing and that comparable information is generated for the study. The most important precaution in recording information after the hearing is making sure that it is recorded immediately while the observer's memory is as accurate as possible.

Discussion of the observation recording form brings us to a final important consideration of the observation technique. That is, what are we going to look for? Since we will be taking the trouble to attend the hearings and we can never go back to supplement incomplete information, it is important that as much data as possible be gathered from each commitment hearing. For this reason we gathered information that was needed to test our hypotheses and information which proved to be of value in explaining our results.

To see whether adequate protection is provided against improper commitment at sanity hearings, the three questions that were mentioned earlier were examined. First, in order to determine whether defendants at commitment hearings have the right to counsel, we recorded whether they had counsel representing them and whether they were informed during the hearing that they had the right to counsel. In order to ascertain whether defendants had the right to have their sanity decided by a jury, we noted whether a jury was assembled to judge their sanity and whether the defendants were told that they had the right to have their sanity determined by a jury during the commitment hearing. The information gathered under each of these rubrics does not present any interpretation problems for the observer. The defendant was either at the hearing or he was not, and this should be clear to any observer.

While it was easy to gather the types of information mentioned

above, we also attempted to obtain other information that required more interpretation. Further material was gathered to attempt to show what conditions make commitment more likely. Two types of information that required more interpretation were the attitudes of the sanity commission toward the defendant and the attitudes of the defendant toward the hearing. The interpretation problem amounted to classifying behavior into categories that are representative of certain types of behavior by commission members or defendants. This information might have been useful in showing the effects of behavior on the outcome of commitment hearings. A sample observation recording form appears in Appendix A.

The second method that was used to gather evidence on how adequately the defendants rights are protected at commitment hearings was interviewing persons who have attended sanity hearings. Those interviewed could include judges, doctors, lawyers, or social workers who have attended commitment hearings. Focused interviews were used with these respondents. In the focused interview the interviewer knows in advance what topic and what areas of the topic he wishes to cover, but the specific questions and timing of questions are left up to the interviewer.[22] This method was particularly useful in our study as a supplement to observed hearings.

The advantage of the focused interview is that it allows one to obtain a wide variety of information. Much of this information could not be obtained through observation. The disadvantage of focused interviewing is that the answers of various respondents may not be

---

[22] Id. at pages 263, 264.

comparable, since respondents will be asked different questions.[23] This was not a significant problem, since the primary information source was the observation of actual hearings, with the focused interviews providing a source of supplemental information.

Review of the Literature

The literature on the involuntary commitment process contains many articles that deal with the statutory provisions of various states. One of these studies is a 1971 American Bar Association report authored by Brakel and Rock.[24] This study details what statutory protections defendants have under state law in the fifty states. An article by Wexler and Scoville presents the statutory provisions under Arizona law,[25] while a New York Law Forum article examines New York's involuntary commitment laws.[26]

The method used by these articles involves normative legal research. The authors examine statutory provisions and case law that is relevant to involuntary commitment proceedings in the area they are studying. All three studies provide a thorough analysis of the law and argue what impact the particular legal arrangements will have on the rights of patients. While such studies can speculate on the probability of improper commitment they cannot tell how often improper commitment.

---

[24] S. Brakel and R. Rock, The Mentally Disabled and the Law (1971).

[25] Supra. note 2 at 1, 2.

[26] "Mental Illness and Due Process: Involuntary Commitment in New York," 16 New York Law Forum (1970).

A small number of studies have gone beyond the scope of most law review articles on the topic and have tried to describe how the commitment process works in practice. One of these studies was conducted by Luis Kutner.[27] In this study Kutner found that commitment hearings in Chicago took from two to ten minutes. He suggested that this represented a real danger since, during this short time, doctors had to decide whether the person was sane. In seventy-seven per cent of the cases the doctors found the defendant to be insane. He further suggested that defendants were under such heavy sedation that they could not defend themselves and that the patients were not warned that they had a right to counsel and to a jury trial. In fact, the study found that social workers who informed patients of these rights were punished and were informed that they would be dismissed if they continued to refuse to "cooperate with the doctors."[28]

Although the conclusions reached by this study are interesting, it could be argued that Kutner went far beyond reasonable bounds in interpreting his data. The most serious problem with the study is that his conclusions are based on three newspaper articles, an interview with a judge, and an interview with a social worker.[29] Certainly the study points to possible problems, but it goes too far when it makes assertions about the entire Cook County commitment process on the basis of two interviews and some newspaper articles. While the Kutner study has obvious methodological faults, it does raise important questions and

---

[27]L. Kutner, "The Illusion of Due Process in Commitment Proceedings," 57 Northwestern University Law Review (1962).

[28]Id. at page 385.

[29]Ibid.

makes some attempt to deal with them beyond the normal assertions found in law review articles.

Another study that considers the civil liberties aspects of commitment hearings was done by Dennis Wenger and C. Richard Fletcher.[30] They sought to determine the relationship between legal counsel and the decision to commit defendants. They were non-participant observers at eighty-one commitment hearings at an unidentified midwestern state mental hospital. Sixty-five persons at the hearings they observed were committed to the mental hospital, and sixteen were released. Of the sixty-five committed, four had lawyers, while eleven of the sixteen people not committed were represented by counsel.[31] On this basis they concluded that there was a high correlation between representation by counsel and avoidance of commitment. Although this study gives some indication of the importance of counsel at commitment hearings, it does not deal with other rights such as trial by jury and the right of the defendant to be present at his hearing.

The studies we have examined show, first, that a great deal of research has been done on what involuntary commitment law is. This is not surprising since such data are relatively easy to obtain.

On the other hand, when we turned to an examination of the application of involuntary commitment law, it became apparent that the literature was extremely sparse. Only two studies have dealt with the way defendants are actually treated at their commitment hearings.

---

[30] D. Wenger and C. Fletcher, "The Effects of Legal Counsel on Admission to a State Mental Hospital: A Confrontation of Professions," 10 Journal of Health and Social Behavior 66-71 (1969).

[31] Ibid.

Kutner considered several aspects of the patient's rights briefly, with a small amount of evidence, while Wenger and Fletcher considered a smaller aspect of the problem in a much more systematic manner.

Justification for Study

The lack of research in the area of the application of involuntary commitment law is the main justification for this study. Several law review articles tell us what the law is and that there is a great deal of injustice under the law as it is written. Our purpose is to present what Oklahoma involuntary commitment law is and attempt to show how the law is applied in Tulsa and Payne Counties. But this project cannot be justified simply because little research has been done on the subject.

The main justification for this study is that it may show abuses of the involuntary commitment process. If citizens are being forced to enter mental hospitals against their will and without due process of law, a great injustice is being done. Such injustice cannot be corrected until its existence is recognized. Thus, this study will attempt to determine whether the rights of those accused of insanity have been violated. If the rights of defendants have not been adequately protected, our study should indicate the extent of this significant but often ignored problem in Tulsa and Payne Counties.

CHAPTER II

OKLAHOMA INVOLUNTARY COMMITMENT LAW

Any examination of how the law is applied should begin with an analysis of how the law is written. Thus, before we consider whether Tulsa and Payne Counties apply Oklahoma law in a way that protects the rights of those accused of insanity we will examine whether the law is written in a way that emphasizes the protection of the patient's rights. Although these problems are closely related it is important that both be considered for a full understanding of the commitment process, and it should not be concluded that a finding concerning the expected impact of the law will be the same as the actual impact of the law. For example, we might find that Oklahoma law is written in a way that appears to provide full protection of the rights of those accused of insanity. Even if we find such apparent protection it is possible that our examination of the application of the law will discover ingenious methods to circumvent the law for the sake of simplicity and speed at the expense of patients' rights. On the other hand, if we find that the law contains no provisions concerning the protection of the rights of defendants we might find that in practice courts had protected the rights of defendants carefully. Thus, it is important to consider both what the law appears to be and how it is administered.

It should be recalled that our examination of the rights of defendants in sanity proceedings will focus on three rights. When it was suggested in chapter one that we expected to find a lack of protection of these rights we asserted that this lack of protection would

be evident if the defendant were denied the right to counsel, the right to be present at his hearing, or the right to have his sanity determined by a jury. We are not asserting that these are the only rights which defendants in commitment proceedings should have to avoid commitment of the sane, but rather that the violation of any of these rights will make commitment of the sane more likely. This chapter will elaborate upon the importance of the three rights and examine how Oklahoma law deals with them.

The Right to Counsel

The right to counsel is important for defendants accused of insanity since involuntary commitment hearings are potentially complex legal proceedings. A lawyer can prepare the best defense because he has the ability to examine the statutory and case law to find those portions which are most favorable to his client. He can make certain that the state follows proper procedures and meets all legal requirements before depriving the accused of his liberty. The lawyer should not be emotionally involved in the case and usually is, as a result, in a better position to present a rational defense. Even a completely sane person faced with a charge of insanity might become angry during the proceeding when he was confronted with testimony against him. This anger could prevent his presenting the best defense even if he had the legal skill to prepare an adequate case.

The importance of legal counsel to developing and presenting a good defense has been recognized for many years by the United States Supreme Court. Justice Sutherland made a good argument for the importance of counsel in Powell v. Alabama that was later included in the

majority opinion of Gideon v. Wainwright. Justice Sutherland argued,

> Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his own innocence.[1]

It would not be an unreasonable extention of Justice Sutherland's argument to suggest that persons accused of mental illness also need legal aid to prepare their strongest defense since the process is a legal one.

Justice Sutherland presented his argument in Powell v. Alabama which involved defendants on trial for a capital offense, but the Court has felt that the right to counsel was important enough to extend that protection to less serious cases. In Argersinger v. Hamlin the Court pointed out that "problems associated with misdemeanor and petty offenses often require the presence of counsel to insure the accused a fair trial."[2] Since the Court felt counsel to be essential to a fair trial they held:

> ...absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.[3]

---

[1] Powell v. Alabama, 287 U.S. 45, 68, 69 (1932).

[2] Argersinger v. Hamlin, 407 U.S. 32, 36, 37 (1970).

[3] Id. at page 41.

With the Argersinger decision it is clear that the Court feels that the right to counsel is an essential part of due process in criminal proceedings that involve any potential imprisonment. If involuntary commitment proceedings were called criminal it would be simple to conclude that, following the Court's reasoning, assitance of counsel is a constitutional necessity.

The question is complicated since commitment proceedings are civil and not designed to punish the defendant. In theory commitment is for the good to the patient as well as that of society. Similarly many states established civil juvenile proceedings to attempt to help young offenders. These also were not supposed to be punitive. In the case Re Gault the Supreme Court considered whether the good intentions of the state allowed it to eliminate procedural rights in juvenile proceedings.[4] In the Gault case the Court ruled that the defendant had a right to counsel and refused to eliminate the requirements of due process because of the good intentions of the state.

> We conclude that the Due Process Clause of the 14th Amendment requires that in respect of proceedings to determine deliquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them or if they are unable to afford counsel, that counsel will be appointed to represent the child.[5]

The same reasoning could easily be applied to mental health hearings since they also involve commitment to an institution that will curtail the individual's freedom.

---

[4]Re Gault, 387 U.S. 1, 17 (1967).

[5]Id. at page 41.

Oklahoma law contains one section that deals with the right to counsel of persons accused of insanity. The state statutes provide:

> The County Attorneys of the several counties shall represent the people of the State of Oklahoma in all proceedings under the Mental Health Law of the State of Oklahoma wherein the alleged mentally ill person is represented by personal counsel.[6]

This is the only section of Oklahoma law that deals with the right to counsel of persons accused of being mentally ill. It is implied that a person may have counsel if he can afford it, but no provision is made to provide those who cannot afford to hire a lawyer with representation.

In the case In re Adams the Oklahoma Supreme Court provided a similiar interpretation of the law.[7] The facts of this case show that Robert Adams was traveling to Oklahoma from Texas to visit his parents. He was making this trip by bus and was reportedly very confused and exhausted. He said that his seat was bugged by political enemies that were trying to get information to use against him. He also claimed that he was working for a United States Senator from Texas. When the bus reached Oklahoma City the police were called, and Adams was taken into custody. On November 17, 1969, while in jail, he was given notice that a hearing on his sanity would be held the next day. Adams asked that his parents be contacted and that he be allowed to hire a lawyer before the hearing. These requests were ignored. At the hearing to determine his mental health he again asked that his parents be contacted and that he be allowed to hire a lawyer. At the hearing his

---

[6] 43A Okla. Stat. sect. 4 (Supp. 1970).

[7] In re Adams, 497 P. 2d 1080 (Okla. 1972).

requests were ignored, and he was found by the court to be mentally ill. As a consequence, he was committed to a state mental hospital. He was held there for over a month before he was released on convalescent leave.[8]

Adams, who was employed by a Senator from Texas, had completed law school at the University of Texas, and was not allowed to take that state's bar examination when he returned because of his commitment. As a result he appealed the commitment order.[9] The Supreme Court of Oklahoma ruled:

> We are of the opinion and hold that since the appellant was denied the right to employ and be represented by a lawyer of his choice, he was denied due process of law at the original hearing; that under the circumstances the finding of the Commission was in violation of Article 2, section 7, of the Oklahoma Constitution which provides that no person shall be deprived of life, liberty or property without due process of law. See also the 14th Amendment to the Constitution of the United States for the same result.[10]

The Adams case clearly points to the need for representation by counsel in commitment proceedings. Adams had a great deal more legal training than the average citizen, yet he was unable to insure that his rights were protected. A lawyer representing him would have remained free to appeal while the mental patient is effectively silenced.

If a person with a law degree is not in a good position to defend himself in commitment proceedings, how can the state expect a semi-literate indigent, who cannot afford counsel, to represent himself

---

[8] Ibid.

[9] Ibid.

[10] Ibid.

and provide a decent defense? It seems likely that the indigent will be left at the mercy of those who are reviewing his sanity and will not be in a position ever to appeal or alter the decision of the hearing--whether it is just or not. For this reason counsel should be provided by the state when the defendant cannot afford to retain his own lawyer. A recent article by A. Thomas Elliot supported this position.[11] He suggested that appointment of counsel should be mandatory for all indigents in involuntary commitment proceedings.

The Right To Be Present At The Hearing

The right of the accused to be present at his trial is one of the long established traditions of our legal system. In 1892 the United States Supreme Court examined the right of the accused to be present at his trial and concluded in Lewis v. United States that it was essential in criminal cases.

> It is the right of anyone, when prosecuted on a capital or criminal charge, to be confronted with the accusers and witnesses, and it is within the scope of this right that he be present, not only when the jury are hearing his case, but at any subsequent stage when anything may be done in the prosecution by which he is to be affected...his life or liberty may depend upon the aid which, by his personal presence, he may give to counsel...The necessities of the defense may not be met by the presence of his counsel only.[12]

The Court felt in the Lewis case that the defendant's presence was so

---

[11] A. Elliot, "Procedures for Involuntary Commitment on the Basis of Alleged Mental Illness," 42 University of Colorado Law Review 259 (1970).

[12] Lewis v. United States, 146 U.S. 370, 373, 374 (1892).

essential to due process that neither the defendant nor his lawyer could waive the right.[13]

In Pointer v. Texas the United States Supreme Court extended the defendant's Sixth Amendment right to confront witnesses against him, an important part of the right to be present at one's trial, to state proceedings through the Fourteenth Amendment.[14] The Gault case held that the rights to confrontation and cross examination applied in juvenile proceedings even if they were called civil rather than criminal.[15]

Clearly, the Supreme Court has established the right of the defendant to be present at his hearing so that he may confront his accusers and aid in his defense. This right has been extended in all criminal cases unless the accused forfeits the right through disruptive behavior or otherwise waives his right. The right has also been ruled necessary to juvenile proceedings.[16] While it is not always safe to predict what action the Court might take, it can be argued that it would not be inconsistent with past rulings for the Court to require this right in mental health commitment proceedings.

Oklahoma law gives the two doctors and a lawyer, who meet as a sanity commission to determine the patient's sanity, the power to exclude the defendant from his hearing.

---

[13] Ibid. In Illinois v. Allen, 397 U.S. 337 (1970), the Court allowed the exclusion of a defendant for disrupting his trial.

[14] Pointer v. Texas, 380 U.S. 400, 403 (1965).

[15] Re Gault, 387 U.S. 1, 42 (1967).

[16] Ibid.

> The alleged mentally ill person shall have the right to be present at such hearing unless it shall be made to appear to the court, either by the certificate of the superintendent of the hospital, or the physician in charge of such hospital, home or retreat to which he has been temporarily admitted, or by certificate of the Sanity Commission, as defined by this Act, that his condition is such as to render his removal for that purpose or his appearing at such hearing improper and unsafe. If such person shall be found and adjudged to be mentally ill, the court or the judge thereof shall immediately issue an order for his admission to the hospital.[17]

Unfortunately this section is so vaguely written that the commission does not have to present a well-defined reason to exclude a defendant from his hearing. The implication is that a person can be kept away from his sanity hearing if he is dangerous.

There are several areas of potential abuse under this section of the Oklahoma statutes. First, if a sane person were excluded from his hearing and his case were decided by a jury, the defendant's rational behavior at the trial could be his best defense. Second, if a defendant is represented by counsel and he is not allowed to attend his hearing he will have no way to assist in his own defense or to determine whether his lawyer actually represented his interests. Finally, under Oklahoma law since the right to counsel is not adequately protected it is important that a defendant be allowed to attend his hearing since if he is absent no one will represent his interests. Without any defense, commitment could well be more likely, and the potential that sane persons might be committed seems greater. These points lead us to the conclusion that the right of the defendant to appear at his hearing should be carefully protected. This protection is not provided by Oklahoma law.

---

[17] 43A Okla. Stat. Sect. 55 (Supp. 1970).

The Right To A Jury Trial

The Sixth Amendment to the United States Constitution requires the protection of the right to a jury trial in most criminal cases while the Seventh Amendment insures the right to a jury trial in most civil cases. In Singer v. United States the Supreme Court suggested, "The jury trial clause was clearly designed to protect the accused from oppression by the government."[18] Trials could be used to silence opposition to the government if only government officials were involved in the decision of the guilt or innocence of the accused. Jury members may be more sympathetic with the accused since they may be able to visualize themselves in his position if the government seems to be prosecuting a weak or unfair case. Thus, the Supreme Court decided in Duncan v. Louisiana that the right to a jury trial is sufficiently significant to be required as an ingredient of due process under the Fourteenth Amendment and is applicable to state criminal trials.[19]

Although the United States Supreme Court has not ruled that states must provide jury trials in civil cases, that requirement is present in the Oklahoma Constitution. Article III section 19 states that "the right of trial by jury shall be and remain inviolate." Because of this provision in the Oklahoma Constitution, it is not surprising that one of the few protections provided for defendants accused of insanity under Oklahoma law is that they have the right to a jury trial if they request it. The law says:

---

[18] Singer v. United States, 380 U.S. 24 (1965).

[19] Duncan v. Louisiana, 391 U.S. 145, 157 (1968).

> If the court or judge thereof shall deem it necessary, or if such alleged mentally ill person, or any relative, friend, or any person with whom he may reside, or at whose house he may be, shall so demand, a jury of six (6) freeholders having the qualifications required of jurors in courts of record, shall be summoned to determine the question of mental illness.[20]

The strength of this section is that it provides an important procedural safeguard. Any time a defendant disagrees with the decision of the Sanity Commission he has the right to have his case heard by a jury. In theory the jury would have to be convinced that the defendant is mentally ill. This could be advantageous, for the defendant, compared to a hearing before administrators of the system who might already be convinced the person is sick.

Unfortunately, when this provision is considered in conjuction with the lack of other vital procedural safeguards, it seems less impressive. For example, it seems unlikely that persons will know that they can demand a jury trial unless they have been able to hire a lawyer. Thus, for the indigent who cannot afford a lawyer the right to a jury may have little meaning in practice. Trial by jury also could be meaningless if the defendant could not afford a lawyer and was excluded from his hearing.

While trial by jury is an important right, it must be allowed in conjunction with other rights for its protection of the defendant to be significant. A lawyer should be provided to develop and present a strong case, and the defendant must be allowed to attend his hearing. With these protections the right to a jury trial becomes much more meaningful.

---

[20] 43A Okla. Stat. Sect. 55 (Supp. 1970).

In summary, our examination of the right to counsel, right to be present at the hearing, and the right to jury trial indicates that decisions of the United States Supreme Court recognize the importance of the protection of the rights even though they have not dealt specifically with the problem of mental health commitment proceedings. In one instance the action of the United States Supreme Court is not so vital to a person subject to Oklahoma civil commitment jurisdiction because the right to a jury trial is guaranteed by the Oklahoma Constitution and applicable statutes. Relative to the right of the defendant to be present at his hearing and right to counsel, Oklahoma law provides less protection, and it is conceivable that a United States Supreme Court ruling might require greater protection of these rights. Absent greater protection, it appears that under Oklahoma law a person could be committed without being provided with assistance of counsel or being allowed to attend his own hearing. Under such circumstances it would be very easy to commit a person, sane or insane, without following the legal procedures required by Oklahoma law. To avoid this danger those accused of insanity should be given greater protection under Oklahoma law.

As mentioned earlier, we cannot assume that sane persons are committed because Oklahoma law does not provide for arguably essential procedural safeguards. It is possible that those who administer the law provide protection for patients, such as providing for assistance of counsel, even though they are not legally obligated to do so. To determine whether procedural safeguards are applied we must test our

hypothesis that "involuntary commitment proceedings in Tulsa and Payne Counties do not apply Oklahoma law in a way that adequately protects the rights of those accused of insanity."

CHAPTER III

INVOLUNTARY COMMITMENT IN PAYNE COUNTY

The Process

Information was obtained on fourteen commitment hearings that occurred between August 20, 1973 and May 22, 1974 in Payne County.[1] Certain similarities appeared in all fourteen hearings. In twelve cases the hearing was conducted in the chambers of Judge Leon York. In one case no formal hearing was held prior to commitment, and in another the hearing of a potentially violent patient was held in jail. Thus, except in unusual cases the hearings were held in the privacy of the judge's chambers. Judge York took a leading role in questioning the patient along with the commission doctors who do not examine the patient prior to the hearing.[2] In a focused interview, Jeff Sinderson, the Payne County Psychiatric Social Worker, indicated that the hearings he attended between August 20, 1973 and March 5, 1974

---

[1]Information on eight hearings was obtained by interviewing Mr. Jeff Sinderson, Payne County Psychiatric Social Worker, on March 8, 1974. He provided information from his files for Stillwater hearings that occurred on August 20, 1973, September 1974, November 1973, January 3, 1974, January 15, 1974, February 14, 1974, and March 5, 1974. He also provided information on a November 1974 hearing that was held in Cushing. Hearings were attended by the author on March 22, 1974, April 11, 1974 and May 9, 1974 in Stillwater and on March 20, 1974 in Cushing. Jeff Sinderson filled out observation forms after attending two hearings on May 22, 1974 in Stillwater.

[2]Interview with Jeff Sinderson, Payne County Psychiatric Social Worker, in Stillwater, Oklahoma, March 8, 1974.

normally lasted from twenty to forty-five minutes.[3] Observation indicated that the hearings lasted from five minutes to thirty minutes with the average hearing length being twenty minutes. The actual examination of the patient was shorter since the hearing time included five to ten minutes for the commission members to fill out several forms.

Of the fourteen persons examined under the Oklahoma commitment procedures between August 1973 and May 1974, eleven were determined to be mentally ill and were committed, two were found to be mentally competent and were released, and in one case no determination was made at the hearing.[4] These results, and the procedures by which they were reached, will be examined to determine whether the requirements of assistance of counsel, trial by jury, and the presence of the accused at his own hearing, determined in the preceding chapter to be vital to a fair hearing, were met. We will examine these three rights as they relate to our hypothesis that "involuntary commitment proceedings in Tulsa and Payne Counties do not apply Oklahoma law in a way that adequately protects the rights of those accused of insanity." The results of this examination will show that in the fourteen Payne

---

[3] Ibid.

[4] The accused in this case had been voluntarily committed on several earlier occasions. Central State Hospital sent a letter that was discussed at the hearing saying that the accused did not need hospitalization, and that if she were committed she would be immediately released. One commission doctor felt the accused should be committed. This conflict left the commission unable to reach a decision, and the case was passed.

County commitment hearings there was a general lack of concern for the protection of these rights. Our hypothesis will therefore be confirmed in Payne County.

Right to Counsel

The first aspect of the hearings to be considered is whether the persons whose sanity was to be determined were effectively guaranteed the right to counsel. The most obvious indicator of this right would be the presence of counsel representing the accused, but even this indicator may be misleading. In only one of the fourteen hearings was the defendant even arguably represented by counsel.

In this case the defendant told the psychiatric social worker for Payne County during an interview prior to the hearing that he would have legal representation at his sanity hearing.[5] The man's father was attempting to have him committed and testified at the hearing that his son had not been handling his financial affairs properly, which was the only evidence of mental illness.[6] A lawyer did come to the hearing who was normally the father's lawyer, and he provided the court with information regarding the defendant's assets. It is hard to classify this lawyer as the defendant's since he did nothing to defend the son at the hearing. That he provided no defense is best illustrated by the fact that when the commission ignored the son's request that his sanity be determined by a jury, the lawyer did not react in any way. A lawyer who was attempting to defend his client at

---

[5] Supra, note 2.

[6] Ibid.

least would have provided support for this request by the defendant because he is guaranteed the right to have his sanity determined by a jury under state law.[7] Thus, even in this instance, it does not appear that the defendant enjoyed the advocacy that is presumed to be present when one is represented by counsel.

Beyond the presence of counsel, one may examine whether persons accused of insanity were given notice of their right to hire counsel of their choice if they are financially able to do so, a right which is guaranteed by the laws of Oklahoma.[8] This allows a more accurate evaluation of our observations because at least some of the defendants might have waived the right to counsel.[9] To examine this we recorded whether defendants were informed that they had the right to hire a lawyer to represent them at their sanity hearing. Of the fourteen defendants only one was told that he had the right to obtain legal counsel. Twelve of the fourteen hearings occurred in Stillwater. Two of them occurred in Cushing, Oklahoma. The same lawyer and doctors serve on the sanity commissions at Stillwater hearings. It was at one of the Cushing hearings that a lawyer who does not normally serve on Payne County sanity commissions informed a defendant that he had the right to counsel.[10] Interestingly, at a second Cushing hearing involving the same lawyer, the judge, who

---

[7] Supra. Chapter 2, note 21.

[8] Supra. Chapter 2, note 6.

[9] It could be argued that any defendant who is found to be insane could not have made an intelligent waiver of the right.

[10] Supra. note 2.

never had informed patients of their right to hire counsel in Stillwater hearings, told those present that he would inform the absent defendant that he had the right to counsel if the defendant were at the hearing.[11] Since the defendant was not present at the hearing the judge's comment by itself did nothing to protect his rights.

As we have seen, protection of the defendant's right to counsel was almost totally lacking in Payne County during the period of study. Only one of fourteen defendants was informed of his right to hire a lawyer, while no defendant enjoyed effective representation. This represents a failure of Oklahoma law since a right that is guaranteed Oklahomans is being ignored in Payne County sanity hearings.

Jury Trial

Since Oklahoma law provides that defendants in sanity hearings have the right to have their sanity determined by a jury we expected to find some cases where the defendant chose a jury trial. This was expected since the jury would be assembled at no cost to the defendant. Thus, an indigent who could not afford to hire counsel might have a jury trial. Our Payne County data indicated that none of the defendants had his case heard before a jury. This can be explained in part by the fact that in all but one case the commissions did not tell the defendants that they had the right to a jury hearing. For these defendants who did not have legal counsel this provision of Oklahoma

---

[11] The judge's comment could have been for the benefit of the Cushing lawyer who informed a patient of his right to counsel at an earlier hearing.

law is probably meaningless.[12] Certainly it appears that the commission lawyer should tell defendants that they have this right if it is to be expected that the right will have any meaning in practice.

Thus, in Payne County, since defendants are not informed that they have a right to a jury trial it is not surprising that no jury trials occurred during the period of observation. Interestingly, one defendant did ask that his sanity be determined by a jury. This case involved that man we mentioned earlier who thought he was represented by counsel.[13] When he asked for a jury trial his request was ignored by the sanity commission. When the facts of the case are considered it is difficult not to wonder whether a jury might have reached a different decision than the commission.

The defendant was a thirty-five year old geologist who was between jobs. When the father sought his son's commitment he argued that his son's irrational behavior was illustrated by the purchase of land and personal items he did not need. As an example of the irrational behavior, the father told about a car his son had sold at a price less than its actual value.[14] If poor handling of financial affairs is grounds for commitment a large portion of the population might be in jeopardy. As was the case in all sanity hearings observed, the father did not testify under oath, and no effort was made to find

---

[12] We are assuming that patients are not aware of this right without any supporting evidence. We did not interview defendants to determine their level of information concerning commitment law. The assumption does not seem unreasonable.

[13] Supra. note 2.

[14] Ibid.

other witnesses to support his testimony. The father's testimony concerning the son's handling of his financial affairs was the only basis for commitment, and there was no evidence or claim that the defendant was dangerous to himself or anyone else. Given these facts a jury might have found the defendant sane. Thus, Payne County's refusal to allow a jury trial might have had significant consequences for the geologist who was committed to a private mental hospital.

Even though all the cases are not so dramatic as the illegal denial of a requested right, all Payne County defendants, with one exception, were effectively denied their right to a jury trial because they were not informed of that right. The lack of notice of the right plus the denial of the right when it was requested left a total absence of jury trials in Payne County involuntary commitment proceedings.

Defendant's Presence At Hearings

Oklahoma law provides that defendants can be excluded from their sanity hearings when the commission thinks it is advisable.[15] Of the fourteen hearings on which we have information two defendants were not present at their hearing. In both cases the defendant was hospitalized. In a case involving an eighty-two year old man the decision to commit took only five minutes, and most of that time was spent filling out papers to pay the commission members for their participation in the hearing. This hearing was a formality that did not provide a chance for the defendant to stop improper commitment. While it may be true

---

[15] Supra. Chapter 2 note 18.

that the defendant could not have understood the nature of the hearing, it seems the hearing could have been held in the hospital to make sure that the defendant had a chance to protest his commitment. This would not be that much of an inconvenience to commission members and would not be inconsistent with their past behavior since they held one commitment hearing in jail so a violent defendant could be present. Although no harm may have been done in the case of the eighty-two year old in the hospital, the potential for improper commitment is great if the defendant is excluded from his hearing. It would be easy for the commission to avoid any possibility of abuse by holding the hearing in the presence of the defendant whenever possible.

In the second case, involving a sixty year old woman with a long history of mental illness, the commisssion decided that the woman was not in a condition to understand the nature of the proceeding and that she should not attend her hearing. This information was obtained prior to arrival at the courthouse for her hearing that was scheduled for that day at 1:30. When Judge Couch, who was to preside over the hearing, was approached he said that the hearing had been cancelled because Judge York had already signed the commitment order. In this case Judge York apparently decided that since the defendant was not going to be at the hearing and no one would be there to defend her the formal hearing should be omitted.

The result probably would not have been any different if a commitment hearing had been held. That may be the most frightening part of the process. It appears that the rights of the patient are so limited that in many cases the commitment hearing is a meaningless formality required by law. The unfortunate part of the situation is that the

commitment hearing provides the best and possibly only opportunity for the defendant to argue that he should not be committed.

The result is that some defendants never have a chance to defend themselves. In two of the fourteen cases this was true because the defendants were excluded from their hearings. When this exclusion is combined with the facts that neither patient had legal counsel to represent him and his commitment was sought by his family, it is difficult to imagine who else might be available to provide a defense. In the two Payne County hearings no defense was provided the defendants that were excluded from their hearing.

In another case the defendant was denied the right to confront his accusers which is a significant part of the right to be present at the hearing. This case involved the attempt by a woman to have her husband committed. She asked the court not to tell her husband that she had requested his commitment, and the court honored her request. The danger of this practice is that the defendant will not have a chance to tell the court what improper motives a person might have for seeking his commitment if he does not know who signed the request that he be committed. For example, he may have done something recently that upset the person even though it did not provide grounds for commitment. An angry wife might seek her husband's commitment if she caught him with another woman to punish him for his conduct. This is clearly an improper use of the commitment process, and it is important that the identity of the person seeking commitment be known to the defendant so the motives of the petitioner can be examined along with the sanity of the defendant.

Other Observations

Another civil right that is important to defendants who are facing the commitment process is that they be given proper notice before their hearing. Notice is important so the defendant will have a chance to obtain counsel or prepare his own defense if he is not going to hire a lawyer. Oklahoma law requires that twenty-four hours notice be given the defendant prior to the hearing. Initially this was an area that we wanted to examine in each commitment hearing, but it was soon discovered that the information was not available from a reliable source and could not be found by observing hearings. Since notice was served prior to the hearing, it was difficult to determine during the hearing whether the statutory requirement had been met.

In one case it became obvious that the defendant had not been given notice prior to the hearing. This case involved an eighty year old man with arteriosclerosis. This is the same man who was informed that he had a right to counsel and jury trial at his hearing. During his hearing the man's son, who was seeking the man's commitment, told the commission that he had not told his father that he was having a commitment hearing because he was afraid he would not come to the hearing if he knew about it in advance. Because of this, he told his father that they had to go to the courthouse on other business and brought his father to the hearing without any notice.

This lack of notice is a clear violation of the applicable Oklahoma statute, which provides:

> Upon receiving such petition the court, or judge thereof, shall fix a day for the hearing thereof, and shall forthwith appoint a Sanity Commission, as defined in this Act, to make an examination of the alleged mentally ill person, whose

> certificate shall be filed with the court on or before such hearing. Notice in writing of such petition and the time and place of hearing thereon shall be served personally at least one (1) day before the hearing, upon the person alleged to be mentally ill.[16]

The importance of the notice provision is that it gives the patient an opportunity to consider his situation, plan a defense, and obtain counsel. If the defendant is placed in the hearing without notice, he must present a defense without the advantage of prior preparation. Under such conditions the chances of presenting a defense are greatly reduced. In Payne County this was allowed to occur in one hearing in clear violation of Oklahoma law, even though the judge presiding at the hearing realized the lack of notice on the basis of facts freely admitted by the patient's son at the hearing.[17]

The rights of patients are clearly violated by the Payne County involuntary commitment process. In one of the cases that was observed by the Payne County Psychiatric Social Worker, Jeff Sinderson, the improper use of the commitment process was illustrated. A sixteen year old boy's parents were trying to have their son committed because they did not want him.[18] He previously had been in a private mental hospital, and the parents were now seeking his commitment to a state mental hospital because their insurance money had run out. According to commission comments at the hearing the members seemed to feel the boy needed a new set of parents more than mental help.[19] In this case

---

[16] 43A Okla. Stat. sect. 55 (Supp. 1970).

[17] Supra. note 2.

[18] Ibid.

[19] Ibid.

the boy was committed with the understanding that he would remain in the mental hospital until a foster home could be found for him. He was sent to the hospital on August 20, 1973 and was not released until October 5, 1973. During this time he did not receive any psychiatric treatment.[20] Thus, in this case the commitment process was used to provide storage for an unwanted boy until a foster home could be found. This is a questionable use of state commitment law, and it seems likely that a jury might not have ordered it. Thus, the violation of rights that took place in this case led to a highly questionable commitment decision.

Beyond the violation of rights, Payne County commitment proceedings also involved a great deal of unnecessary insensitivity on the part of some commission members. During one hearing the judge mentioned that he had always noticed a rash of "this type" of problem this time of year. He also suggested that the full moon might be the cause of insanity. One of the doctors added, that is why they call them "lunatics." The judge then asked the defendant whether she thought the moon had anything to do with her problem. She did not respond. After a return to the business of the hearing the judge again brought up his suggestion that insanity was caused by the season and the phase of the moon. The judge gave no indication that he was joking. The defendant made one of the more sane comments when she said that she thought everyone was a little bit crazy. Not only was this discussion totally irrelevant to the business of the hearing, it was totally insensitive to the feelings of the defendant.

---

[20] Ibid.

Our examination of the rights of those accused of insanity in Payne County confirms our hypothesis. We found that defendants were not informed of their right to counsel or their right to a jury trial. In one case when the defendant asked for a jury trial the commission ignored the request. We found that most defendants attended their hearing even though the commission occasionally excluded a hospitalized patient from his hearing. The following table summarizes our observations.

TABLE I

SUMMARY OF THE INCIDENCE OF THE PROTECTION OF PATIENTS' RIGHTS
PAYNE COUNTY

Case*	Informed of Right to Counsel	Obtained Counsel	Informed of Right to Jury Trial	Jury Trial Occurred	Defendant Present at Hearing
Case A					X
Case B					X
Case C					X
Case D	X		X		X
Case E					X
Case F		X			X
Case G					X
Case H					X
Case I					
Case J					
Case K					X
Case L					X
Case M					X
Case N					X

*Cases are presented in chronological order. Each X indicates the protection of a patients' right.

Beyond the widespread violation of patients' rights that is illustrated by Table I, other violations developed during the period of study. In one case the fact that the patient did not receive legally required notice prior to his hearing was apparent. In another case no hearing was held prior to the commitment of a patient.

As our data demonstrate, violations of patients' rights occurred so frequently in Payne County as to make it easy to use the commitment process improperly. It should be recalled that one man was committed for handling his financial affairs improperly while a child was committed until a foster home could be found. These were, at best, questionable uses of the commitment process that would be less likely under a system that provided full protection of the rights of the patient.

CHAPTER IV

INVOLUNTARY COMMITMENT IN TULSA COUNTY

The Process

Between August 21, 1974 and March 21, 1975 twenty-one involuntary commitment proceedings were observed in Tulsa County.[1] Regularities appeared during the observation. No patient was told that he had a right to counsel or trial by jury during the hearing, although in each case a sanity commission lawyer told the judge that the defendant had been fully informed of his legal rights during a separate examination held prior to the formal hearing. The separation of the examination and the hearing was another aspect of the process that occurred in every hearing. None of the defendants observed in Tulsa had his sanity determined by a jury.

All formal hearings in Tulsa were held in open court. The sanity commission lawyer attended the hearings to present the commission's decision to the judge. As he presented the commission's report on the defendant, he told the judge that the rights of the patient had been fully explained and protected during the examination. In each case the judge briefly examined the report and then announced the commission's decision to the patient who was seated with spectators

---

[1] Hearings were observed in Tulsa County by the author on August 21, 1974, January 24, 1975, February 7, 1975, February 14, 1975, February 28, 1975, March 10, 1975, March 12, 1975, March 14, 1975 and March 21, 1974.

in the courtroom. In some cases the judge made a friendly comment to the patient after announcing the commission's decision. For example, he might say that the patient should be out of the hospital soon, or he might wish the patient good luck. In some cases he told persons who were not committed that he hoped they would get some help on their own. In each case when the judge spoke to patients he was compassionate and friendly.

The most striking aspect of the commitment hearings observed in Tulsa County was their procedural uniformity. The process always involved a quick formalization of the sanity commission's decision, taking from three to five minutes. In some cases the uniformity was subtly altered by the appearance or actions of the patient. This occurred in two cases in which the patients were in chains during their hearings to prevent them from committing any violent behavior. The chains were noticeable as the patients came into the courtroom and remained obvious as they rattled on the courtroom's wooden seats. The uniformity also seemed lost in a case involving an Arab student from the University of Tulsa who loudly tore up a copy of the Tulsa County Legal News during his short hearing. Despite these diversions the legal process was the same in all hearings to a courtroom observer. The following table shows the outcome of 1974 commitment hearings in Tulsa County.

TABLE II

TULSA COUNTY COMMITMENT DECISIONS DURING 1974

Period	Cases	Involuntary Commitments	Voluntary Commitments	Dismissals
January	41	20	3	16
February	45	30	5	10
March	40	19	4	19
April	39	23	2	13
May	33	21	2	9
June	26	16	3	5
July	33	19	4	6
August	37	24	1	13
September	38	21	3	13
October	44	30	2	13
November	29	15	2	10
December	32	21	1	9
Total	437	259	32	136

Source: Tulsa County Court Records, Monthly Summary Sheets.

Table II indicates that approximately sixty-one per cent of those who go through the commitment process in Tulsa County are involuntarily committed. For every voluntary commitment that occured in Tulsa County Court eight people were committed involuntarily. Our concern is whether the court in Tulsa County protected the rights of the individuals who lost their liberty through the commitment process. Table II provides some encouragement since a substantial number of people who were accused of insanity were found to be sane, but the process must be examined in more detail to determine whether those who were committed

were afforded their right to counsel, their right to a jury trial and their right to be present at their hearing.

Right to Counsel

Despite the fact that state law does not require the provision of counsel for indigent defendants at sanity hearings, lawyers are provided any defendant who requests legal aid in Tulsa County.[2] Despite this opportunity for counsel, only nineteen per cent of the defendants had legal representation at the hearings we observed. Of the four defendants who had lawyers only one was indigent. Thus, eighty-one per cent of the defendants in Tulsa County did not have legal counsel even though it was supposed to be available.

The low percentage of representation by counsel may be explained if some defendants are not informed of their right to counsel. Since the Tulsa commitment process is divided into two parts, each must be considered as a place for the explanation of legal rights. During the hearing phase of the process no defendant was warned of his right to counsel. At each hearing the commission lawyer did tell the court that he had fully explained the defendant's rights during the examination. Since the percentage of patients that have counsel is only nineteen per cent, it is questionable whether the commission lawyers are doing an adequate job explaining the right to counsel during the examination. Only further study that focuses on the examination phase rather than the hearing phase of the process can

---

[2] Interview with M.M. McDougal, District Judge, in Tulsa Oklahoma, March 10, 1975.

determine how fully the rights of the defendant are explained. Logically it could be argued that this would vary from examination to examination depending on which lawyer was serving on the sanity commission. Some lawyers might take this responsibility more seriously than others.

Jury Trial

Because defendants in Tulsa were supposed to be warned of their legal rights, including the right to a jury trial, we expected to find that jury trials were a common event in Tulsa County. Court records indicate that during 1974 thirteen jury trials were held. This represents slightly less than three per cent of the four hundred thirty-seven cases during that period. This percentage is surprisingly low because persons who are committed through the involuntary process normally object to their commitment, and they have the right to request a jury trial after the sanity commission has reached its decision. Thus, if the commission decides to commit a defendant, he has a chance to appeal the commission's decision to a jury. Since this option does not cost the defendant anything financially, it is remarkable that more defendants do not request jury trials.

One reason for the low number of jury trials may be that defendants are not being informed of their right to a jury trial. In one case, prior to the formal hearing the mother of a teenage boy who was about to be committed was talking with the commission lawyer. She seemed to feel guilty because she was asking for her son's commitment and seemed to seek reassurance from the commission lawyer that her son was being treated properly. In the conversation the lawyer

mentioned that his job on the commission was to make sure that the rights of the patient were protected. He suggested that, as an example, he would tell the patient that he had the right to a jury trial. The father of the boy then asked the lawyer whether he had been told he could have a jury trial. The lawyer said that it had not been necessary to tell their son of this right since he was cooperative.[3] When Judge McDougal was asked in an interview about this situation he was upset by it and said that the lawyer should always tell the defendant what his rights are even if he is cooperative.[4]

Interestingly, the boy whom the lawyer characterized as cooperative was brought to court in chains to restrain him. Assuming that the lawyer felt the young man was cooperative and would not have wanted a jury trial, why was it necessary to bring the boy into court in restraint? The answer may be in the medication that he was receiving. It is a common practice for patients in Tulsa County to be held at the Tulsa Psychiatric Center prior to their hearing.[5] For humanitarian reasons this may be better than holding the patients in jail prior to their hearing, but it can create legal problems since patients are forced to receive treatment before their commitment hearing. Judge McDougal admitted that this was a common practice.[6]

---

[3]The author heard this conversation while waiting for the hearing to begin.

[4]Supra. note 2.

[5]Interview with Dr. B. J. Byrd, psychiatrist, Tulsa Psychiatric Center, in Tulsa, Oklahoma, August 13, 1974.

[6]Supra. note 2.

In some cases he suggested that defendants who would have been committed without any treatment improved enough during their treatment prior to their hearing to avoid commitment.[7] Part of the treatment, according to Dr. Byrd of the Tulsa Psychiatric Center, is the use of drugs that tend to make the patient more "cooperative." Dr. Byrd suggested the patients were more cooperative because they could think rationally and see what was best for them.[8]

This may may explain why in some cases patients who are normally opposed to their commitment might not resist commitment at their hearing. This practice in Tulsa County may not appear to be so abusive of the accused's rights as the refusal to allow a jury trial, but it has the same impact, Further study is needed to determine how singificant this problem is in Tulsa County.

The importance of fully protecting the right to a jury trial is illustrated by the few jury trials that took place in Tulsa County during 1974. Of the thirteen jury trials the patient was committed in nine cases and released in four cases.[9] This means that approximately thirty per cent of the patients who demanded a jury trial were found sane even though the commission doctors felt they should be committed. Thus, regardless of the reason so few jury trials occur in Tulsa County commitment proceedings, it is clear that when the

---

[7] Ibid.

[8] Supra. note 4.

[9] The information on jury trials was obtained by examining the calendar of the Tulsa County Commissioner of Mental Health, Pat Williams, and then checking the court's docket on days that jury trials were indicated to find the jury's decision.

patient does not have a jury trial he loses a significant chance to have the commission's decision to commit him reversed.

Defendant's Presence At Hearings

During the period of observation the defendant was not present at two hearings. According to Judge McDougal the only proper reason for not allowing the defendant to attend his hearing was that he was hospitalized and restricted to bed.[10] Potential violence was not an acceptable reason for excluding the patient from his hearing. Two cases were observed where potentially violent patients were brought into the courtroom in physical restraint rather than be excluded from their hearing.

In the two cases involving exclusion of the defendant from his hearing one commitment occurred. A defendant who was not present at his hearing and lacked legal counsel was in a particularly vulnerable position. On the other hand, since no defendant involved in a Tulsa hearing said anything in his own defense during the formal commitment hearing, the exclusion was not so significant.

Apparently the patient's only opportunity to affect the outcome of his hearing is at his examination. The only exception to this would be if the patient felt he had been unjustly treated and protested during his formal hearing. Although this did not occur in the observed cases, it is a possibility for defendants who are present at their

---

[10] Supra. note 2.

hearing. Judge McDougal indicated that he would listen to any comments made by the defendant during the hearing even though this is not encouraged.[11]

Other Observations

One aspect of the Tulsa County commitment process that was not covered in our discussion of the process and the three rights is very interesting. This is the judge's use of his detention power under Oklahoma's mental health law. The statute states:

> Pending such proceeding for admission into the hospital, if it shall be made to appear to the satisfaction of the County Court of the judge thereof, upon medical evidence or other competent testimony, that the alleged mentally ill person is violent or his condition is such that he may injure himself or others, then the court or judge thereof may order to be issued an order directed to the sheriff or other peace officer within the county in which such petition is filed, for the detention of such alleged mentally ill person in some suitable place, until such petition can be heard and determined; provided, however, that the period of such temporary detention shall not exceed thirty (30) days.[12]

Judge McDougal used his detention power to require the treatment of patients at the Tulsa Psychiatric Center whom the doctors believed might be helped in a short period of time. The requirement in the statute that the patient be dangerous to himself or others was ignored.[13]

The judge used his detention power in this manner because he feels a less drastic solution than involuntary commitment is needed in

---

[11] Ibid.

[12] 43A Okla. Stat. sect. 55 (Supp 1970).

[13] Supra. note 2.

some cases. During an interview Judge McDougal suggested that his experimentation with the detention provision may stretch the law some, but it is necessary to develop case studies to show to the state legislature before seeking a change in the law. One advantage that the judge cited for his use of detention in place of commitment was that no commitment record was required. The process was called semi-voluntary by Judge McDougal since the patient's consent is required by him before he may use detention for treatment purposes. Once the patient has agreed to detention, he may be required to receive treatment for thirty days.[14] If the patients are fully informed of their alternatives, this use of the state's detention law may be to some patients' benefit. On the other hand, if the court ever used detention for defendants that the commission felt needed help but were not ill enough to be committed, the use of detention would violate the rights of the patient, depriving them of liberty without due process of law.

Two hundred fifty-nine defendants in Tulsa, County commitment hearings were deprived of their liberty. Our examination of the process by which these persons were committed indicates that the rights of these patients were not adequately protected. Patients normally attended their commitment hearings in Tulsa County, being excluded only in cases of hospitalization for some type of illness, as was the case in Payne County. Of the two defendants out of twenty-one who were excluded from their hearings, one had counsel and one did not.

---

[14] Ibid.

The patient without counsel was committed. Only four defendants were represented by counsel. No defendant was informed of his legal rights during his commitment hearing. The following table summarizes the protection of patients' rights in Tulsa County commitment hearings.

TABLE III

SUMMARY OF THE INCIDENCE OF THE PROTECTION OF PATIENTS' RIGHTS
TULSA COUNTY

Case*	Informed of Right to Counsel	Obtained Counsel	Informed of Right to Jury Trial	Jury Trial Occurred	Defendant Present at Hearing
PMH 74-275					X
PMH 74-276					X
PMH 74-277					X
PMH 75-25		X			X
PMH 75-46					X
PMH 75-47		X			X
PMH 75-48					X
PMH 75-39		X			X
PMH 75-54		X			
PMH 75-74					X
PMH 75-75					X
PMH 75-87					X
PMH 75-88					
PMH 75-89					X
PMH 75-90					X
PMH 75-91					X
PMH 75-92					X
PMH 75-93					X
PMH 75-94					X
PMH 75-99					X
PMH 75-100					X

*Cases are presented as they appeared on the docket of the Tulsa County Court.

Despite the more sophisticated nature of the Tulsa commitment process, it is clear that the patients' rights were not fully protected. An effective right to counsel was lacking in eighty-one per cent of the cases observed. Only three per cent of the defendants had their sanity determined by a jury. Interestingly, juries refused to commit thirty per cent of the defendants who had jury trials even though the doctors on the sanity commission would have ordered commitment. Thus, it could be argued that the jury trial is a significant protection that more defendants should enjoy. The lack of protection that was apparent in Tulsa County's commitment process confirms our hypothesis that "involuntary commitment proceedings in Tulsa and Payne Counties do not apply the law in a way that adequately protects the rights of those accused of insanity."

CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Involuntary commitment inherently involves limiting the liberty of the person committed. Since our Constitution provides, in the Fourteenth Amendment, that no person shall be deprived of liberty without due process of law, we decided to examine the involuntary commitment process to see whether the rights of defendants are adequately protected. Before beginning our inquiry the research of others was considered.

In our review of the literature we found several articles that examined the way involuntary commitment laws are written and the expected impact this would have on the rights of those accused of insanity. The best article of this type was an American Bar Association report authored by Brakel and Rock which provided an excellent summary of each state's commitment law. The main weakness of this type of research is that it does not tell how the law is being administered.

Two studies considered this problem. Kutner concluded that the rights of patients are violated by the Cook County, Illinois, commitment process after interviewing a judge and a social worker and reviewing three newspaper articles. Wenger and Fletcher examined a small part of the problem in a more systematic manner. They were concerned about the impact of counsel on the commitment decision.

Using non-participant observation of commitment hearings, they concluded that defendants who were represented by counsel were less likely to be committed.

After considering the literature we decided to examine the commitment process on two levels. First, we considered how Oklahoma law was written to determine whether it appeared to provide adequate protection of the rights of those accused of insanity. Second, we considered how the law is administered in Oklahoma. Concerning the application of the law, we hypothesized that "involuntary commitment proceedings in Tulsa and Payne Counties do not apply the law in a way that adequately protects the rights of those accused of insanity. Tulsa and Payne Counties were selected for the study since it was economically feasible to study both areas. Adequate protection of rights was considered to exist if the patient's right to counsel, jury trial, and right to be present at his hearing were protected. If any one of these rights were violated, the patient's protection was considered inadequate.

The first part of the study involved the development of the importance of each right along with an examination of how Oklahoma statutory and case law provided for the protection of the right. We found inadequate protection of the right to counsel since indigents are not guaranteed counsel under Oklahoma law. Oklahoma law provided for jury trial on demand, but this protection is meaningless without a lawyer to explain the right and prepare a proper defense to argue before the jury. It was also found that Oklahoma law allows the exclusion of defendants from their hearing.

As we turned to the study of how Oklahoma law is applied in

Tulsa and Payne Counties, methods had to be selected to gather useful information about the commitment process. Non-participant observation was selected since it could provide information to confirm or reject our hypothesis. To make sure that the information was comparable an observation form was developed. Focused interviews were used to obtain information to supplement the non-participant observation.

Information was obtained on fourteen Payne County commitment hearings. This information showed a total lack of protection of the patients' rights. No defendants in Payne County had effective legal representation. During the period of study no jury trials were held even though one defendant demanded a jury trial. Two defendants were excluded from their hearing because they were hospitalized. In one of these cases no formal hearing was held. Thus, each of the three rights we considered essential to a fair hearing were violated in Payne County. Beyond this, our information indicated that one defendant was not provided the legally required notice prior to his hearing, and no defendant was told that he had legal rights under Oklahoma law during his commitment hearing. Clearly, the information obtained in Payne County strongly confirmed our hypothesis.

Twenty-one Tulsa County involuntary commitment hearings were observed. In nineteen per cent of the cases observed the defendant enjoyed the representation of counsel. No jury trials were observed, but during 1974 slightly less than three per cent of the defendants had their sanity determined by a jury. Two defendants were excluded from their sanity hearing because they were hospitalized. One of these defendants did not have legal counsel during his hearing. Our information indicates that defendants in Tulsa County might demand

certain rights. They might demand a jury trial and they might even have legal counsel appointed if they could not hire their own lawyer. There are indications that while defendants might demand their rights they were not encouraged to do so.

During the commitment hearings no defendant was informed of his right to have a jury trial or counsel. Commission lawyers reported during the hearing that the patient's right had been fully explained and protected at the examination, which is separate from the hearing in Tulsa County. In one case a commission lawyer had not informed a patient of his right to a jury trial because the defendant was cooperative. This cooperation may have been artificially stimulated since many Tulsa County patients received drug treatment prior to their hearing that tended to make them less likely to resist their commitment. Patients who are robbed of their will to resist commitment are effectively stripped of their rights even if they are told they may have counsel and a jury trial. Thus, our Tulsa County information tended to confirm our hypothesis.

Recommendations for Further Research

Because the Tulsa County commitment process seemed to focus on the examination phase, more research is needed to find out how adequately the patient's rights are protected during that phase of the process. Certainly this research should tell us whether commission lawyers informed patients of their legal rights, and whether the examination was sufficient to determine the person's sanity.

Treating patients with drugs prior to their hearings provide another area for further research. Research to indicate how common

this practice is and what impact it has on the patients' will to resist commitment would be helpful.

Further research is needed to determine whether the violations of state law, which occurred in Payne County, are common in other parts of the state. If similiar violations appeared in other sections of the state, it might be possible to develop generalizations concerning what factors lead to the violation of a patient's rights. This type of research would move us from considering the extent of the problem to a greater understanding of the factors that cause violation of patient rights.

SELECTED REFERENCES

General References

Brakel, Samuel J., and Ronald S. Rock. The Mentally Disabled and the Law. Chicago: The University of Chicago Press, 1971.

Byrd, B. J., Psychiatrist, Tulsa Psychiatric Center, personal interview, August 13, 1974.

Elliot, Thomas A. "Procedures for Involuntary Commitment on the Basis of Alleged Mental Illness" University of Colorado Law Review, 42 (November, 1970), pp. 231-269.

Forcese, Dennis P., and Stephen Richer. Social Research Methods. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1973.

Katz, Jay et al. Psychoanalysis Psychiatry and Law. New York: The Free Press, 1967.

Kutner, Luis. "The Illusion of Due Process in Commitment Proceedings" Northwestern University Law Review, 57 (1962), pp. 383-399.

"Mental Illness and Due Process: Involuntary Commitment in New York" New York Law Forum, 16 (Spring, 1970), pp. 164-186.

McDougal, M. M., Tulsa County District Judge, personal interview, March 10, 1975.

Polier, J. W. The Rule of Law and the Role of Psychiatry. Baltimore: The Johns Hopkins Press, 1968.

Postel, Richard I. "Civil Commitment: A Functional Analysis" Brooklyn Law Review, 38 (Summer, 1971), pp. 1-94.

Selltiz, Claire et al. Research Methods in Social Relations. New York: Holt, Rinehart, and Winston, 1964.

Sinderson, Jeff, Payne County Psychiatric Social Worker, personal interview, March 8, 1974.

Szasz, Thomas S. Law, Liberty and Psychiatry. New York: The Macmillan Company, 1963.

Szasz, Thomas S. Psychiatric Justice. New York: The Macmillan Company, 1965.

Webb, Eugene J. et al. Unobtrusive Measures: Nonreactive Research in the Social Sciences. Baltimore: The Johns Hopkins Press, 1968.

Wenger, Dennis L., and C. Richard Fletcher. "The Effects of Legal Counsel on Admissions to a State Mental Hospital: A Confrontation of Professions" Journal of Health and Social Behavior, 10 (March, 1969), pp. 66-72.

Wexler, David B. et al. "Special Project: The Administration of Psychiatric Justice: Theory and Practice in Arizona" Arizona Law Review, 13 (1971), pp. 1-259.

Wexler, David B. "Therapeutic Justice" Minnesota Law Review, 57 (December, 1972), pp. 289-338.

Legal References

Argersinger v. Hamlin, 407 U.S. 32 (1970).

Duncan v. Louisiana, 391 U.S. 145 (1968).

Illinois v. Allen, 397 U.S. 337 (1970).

In Re Adams, 497 P. 2d 1080 (Okla. 1972).

Lewis v. United States, 146 U.S. 370 (1892).

Pointer v. Texas, 380 U.S. 400 (1965).

Powell v. Alabama, 287 U.S. 45 (1932).

Re Gault, 387 U.S. 1 (1967).

Singer v. United States, 380 U.S. 24 (1965).

Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971).

43A Okla. Stat. Sect. 3, 4, 55 (Supp. 1970).

APPENDIX

OBSERVATION FORM

APPENDIX

FORM C

1. Date _____ 2. County (1) Payne (2) Tulsa 3. City _____

4. Judge _____ 5. Hearing Location (1) judge's chambers (2) courtroom (3) jail (4) other _____

6. How long did the hearing last? _____ 7. Defendant's age _____

8. Defendant's sex (1) Male (2) Female 9. Defendant's race (1) white (2) black (3) American Indian (4) other _____

10. Is the sanity commission legally complete? (A legally complete sanity commission has one lawyer and two doctors.) (1) yes (2) no (If no explain on the back of this page)

11. Was the defendant present at the hearing? (1) yes (2) no If no was a reason given by the commission? Explain: _____

12. Was the defendant represented by counsel? (1) yes (2) no If yes what was the lawyer's name? _____

13. Was the defendant informed that he had the right to obtain counsel at the hearing? (1) yes (2) no If yes who gave the defendant this information? _____

14. Was the defendant informed that he had the right to have his sanity determined by a jury at the hearing? (1) yes (2) no If yes, who gave information? _____

15. Was the defendant given any other advice regarding his legal rights at the hearing? (1) yes (2) no If yes explain what advice was given and who gave it _____

16. Did the defendant appear confused by the commitment hearing? (1) yes (2) no If yes what made the defendant appear confused? _____

17. Did the defendant say that he felt he would be committed regardless of what he said or did during the hearing? (1) yes (2) no

FOR EACH COMMISSION MEMBER READ THE LIST OF STATEMENTS BELOW AND CIRCLE THE NUMBERS AFTER THEIR NAME THAT BEST DESCRIBE THEIR BEHAVIOR AT THE HEARING AND REACTION TO THE DEFENDANT. MORE THAN ONE NUMBER MAY BE CIRCLED.

18. Judge _____
(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12)

19. Lawyer _____ Lawyer's address _____
(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12)

20. Doctor _____ Doctor's address _____
(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12)

21. Doctor _____ Doctor's address _____
(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12)

IF ANYTHING ABOUT ANY OF THE COMMISSION MEMBERS BEHAVIOR WAS PARTICULARLY SIGNIFICANT PLEASE COMMENT OF THE BACK OF THIS PAGE.

(1) The commission member did not play an active role in the hearing.
(2) The commission member acted as if the defendant was not present at the hearing. He talked about the defendant, but did not talk to the defendant.
(3) The commission member treated the defendant as if he were a child who could not understand the nature of the hearing.
(4) The commission member acted as if the defendant were an adult who could understand the nature of the hearing.
(5) The commission member treated the defendant like he was a violent person that could not be trusted.
(6) The commission member treated the defendant like he was a bad person who needed punishment.
(7) The commission member treated the defendant like he was a normal person until proven insane.
(8) The commission member treated the defendant like he was sick and needed help.
(9) The commission member treated the defendant like he was a problem who was a burden to others.
(10) The commission member's treatment of the defendant could best be characterized as helpful since he did his best to explain things to the defendant even when the defendant did not ask for the information.
(11) The commission member's treatment of the defendant could best be characterized as neutral since he answered questions, but did not encourage them.
(12) The commission member's treatment of the defendant could best be characterized as negative since he discouraged the defendant's participation in the hearing.

22. Which of the following best describes how much the defendant participated verbally in the hearing?
(1) Withdrawn (The defendant did not say anything and would not answer questions.)
(2) Passive (The defendant's response was limited. He gave partial answers to questions but did not say as much as he could have under the circumstances.)

(3) Cooperative (The defendant gave full answers to questions but did not make any comments unless there was an appropriate opportunity.)
(4) Assertive (The defendant said more than he was asked to. He interrupted a few times to say what he wanted. He may have used questions to lead into the discussion of new areas he wanted to bring up.)
(5) Uncooperative (The defendant tried to entirely control the hearing, and constantly interrupted. He tried to dominate the proceeding.)

Explain. _____

23. How would you rate the defendant's general behavior at the hearing?
(1) He ignored the hearing. (He did not seem to realize that the hearing was in progress or showed no reaction to it.)
(2) He was submissive. (He did what he was expected to. He did not do anything on his own initiative but waited for others to indicate what he should do.)
(3) He was defiant. (He defended himself, rejecting any suggestion that he should be committed in a well mannered but firm manner.)
(4) He was hostile. (He attacked the suggestion that he should be committed in an aggressive non-violent manner.)
(5) He was violent. (He attacked the suggestion that he should be committed in a violent manner.)

Explain. _____

24. If the defendant was represented by counsel what arguments did the the lawyer present against commitment? _____
Lawyer's name

_____
Address

List arguments: _____

25. Did any others play a significant role in the hearing besides the commission members, judge, defendant, and defendant's lawyer? (1) yes (2) no If yes tell who the person or persons were and what role they played:

26. Hearing decision (1) commitment (2) not to commit (3) other

27. Did the commitment order contain or was it understood that any special conditions were part of the commitment order? (1) yes (2) no If yes explain:

28. If the person was committed what reason for commitment was presented by the hearing?

29. List any background information you have about his case. (Give Source.)

VITA

Matthew E. Watson

Candidate for the Degree

Master of Arts

Thesis: THE THEORY AND PRACTICE OF INVOLUNTARY COMMITMENT IN TWO OKLAHOMA COUNTIES

Major Field: Political Science

Biographical:

Personal Data: Born in Tulsa, Oklahoma, October 12, 1950, the son of Mr. and Mrs. William E. Watson.

Education: Graduated from Thomas Edison High School, Tulsa, Oklahoma, in May, 1968; Graduated from Knox College in Galesburg, Illinois with honors in Political Science, receiving a Bachelor of Arts degree in June, 1972. Completed requirements for the Master of Arts degree at Oklahoma State University, Stillwater, Oklahoma, with a major in Political Science in May, 1975.

Professional Experience: Graduate Teaching Assistant, Department of Political Science, Oklahoma State University, 1973-1975; Instructor, Division of Cultural and Social Services, Tulsa Junior College, Summer Term 1974.

Professional Organization: Member of Pi Sigma Alpha.