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THE PSYCHOLOGICAL CONSEQUENCES OF JUDICIAL PROCEDURES: IMPLICATIONS FOR CIVIL COMMITMENT HEARINGS

Tom R. Tyler*

A key Supreme Court decision regarding involuntary civil commitment hearings is *Parham v. J.R.*¹ In *Parham*, the Supreme Court ruled that minors are not entitled to a hearing prior to involuntary admission into a state mental hospital because state psychiatrists, those otherwise responsible for making the admissions decision, could act as a "neutral factfinder."²

The identification of "neutral factfinding" as the criterion against which to evaluate the adequacy of judicial hearings is consistent with the legal literature on procedures. That literature typically focuses on issues such as bias, honesty, and expertise.³ These aspects are regarded as important because they are believed to influence the ability of a procedure to reach an objectively correct outcome.⁴

An important question in determining the balance of authority in commitment hearings is whether the procedural safeguards can assure neutral factfinding.⁵ In commitment hearings authority can be given to professional and/or to judicial decision-makers. Professional authority refers to the discretion given to psychiatrists or psychologists to determine mental competence, usually based on tests and interviews with the person whose competence is in question.⁶ Judicial authority refers to similar discretion

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1. 442 U.S. 584 (1979). *Parham* was not the first case to consider the therapeutic consequences of commitment hearings for juveniles. For a review of the history of laws governing the parental commitment of minors, see J.W. Ellis, *Volunteering Children: Parental Commitment of Minors to Mental Institutions*, 62 CAL. L. REV. 840-916 (1974).

2. *Parham*, 442 U.S. at 606-07.

3. See TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 6-7 (1990).

4. *Id.*

5. Donald N. Bersoff, *Judicial Deference to Nonlegal Decisionmakers: Imposing Simplistic Solutions on Problems of Cognitive Complexity in Mental Disability Law*, 46 SMU L. REV. 329 (1992).

6. *Id.*

given to judges, typically exercised through some form of judicial hearing.⁷

If the key concern in devising commitment procedures is determining the true mental state of the person in order to make the best decision about commitment, then this balance of authority should be shaped by evaluations of the capabilities of professional and judicial decision-makers.⁸ Recent research has documented many errors in clinical decision-making, suggesting that judicial decision-making might be beneficial.⁹ If future studies that directly compare the relative error rates in clinical and judicial decision-making suggest that judicial hearings are more accurate, or lead to more desirable errors,¹⁰ those findings would support the use of judicial hearings.

It is also possible to draw potential criteria for evaluating commitment procedures from a different set of criteria used for evaluating legal procedures. These alternative criteria have been articulated by the Supreme Court. In *Goldberg v. Kelley*¹¹ the Supreme Court argued that welfare recipients are entitled to a hearing of a particular type before their welfare benefits are terminated.¹² Although primarily concerned with issues of accuracy, the Court also recognized that termination without a hearing could be psychologically harmful, potentially damaging feelings of security, dignity, and self-worth.¹³ In other cases dealing with the due process rights of students and prisoners, the Court similarly identified the possible psychological harm of experiencing unfair procedures as a reason for granting rights to a hearing.¹⁴

The potential consequences of the psychological harm of experiencing unfair hearings is articulated most clearly in *Morrissey v. Brewer*.¹⁵ In *Morrissey* the Court indicated that prisoners should be given judicial hearings because denying them due process could cause them psychological harm (i.e. would be antitherapeutic) and thus undermine their rehabilitation.¹⁶

These decisions are important because the courts recognize the importance of considering the psychological impact of judicial procedures on those experiencing the procedures. This impact is distinct from the desire for a neutral, fact-finding expert, such as a judge or a psychiatrist, who is expected

7. *Id.* One important difference between these two procedures is that judicial hearings involve due process rights, while professional evaluations do not.

8. *Id.*

9. See JOHN MONAHAN & LAURENS WALKER, *SOCIAL SCIENCE IN LAW: CASES AND MATERIALS* (1st ed. 1985).

10. It is important to recognize that the total amount of error in a procedure is not the only criteria for its evaluation. The legal system deems some types of error to be more unacceptable than others. For example, falsely committing a sane person might be viewed as a more serious error than falsely releasing an insane person.

11. 397 U.S. 254 (1970).

12. *Id.* at 264.

13. *Id.* at 264-66.

14. See, e.g., *Morrissey v. Brewer*, 408 U.S. 471, 472 (1972) (addressing whether the "Due Process Clause of the Fourteenth Amendment requires that a State afford an individual some opportunity to be heard prior to revoking his parole").

15. 408 U.S. 471 (1972).

16. *Id.* at 484. Some state courts have also recognized similar interests of individuals. For example, the California Supreme Court discussed those interests in *People v. Ramirez*, 599 P.2d 622 (Cal. 1979).

to reach accurate decisions.¹⁷ When conceptualized this way, due process involves giving people judicial procedures that they will perceive as fair.

The law concerning the use of civil commitment hearings to determine mental competence has varied greatly in the degree that it has suggested that people are entitled to judicial hearings. In the past, such hearings, like those involving prisoners, welfare recipients, and students, were often conducted with minimal attention to issues of due process.¹⁸ The introduction of what David Wexler labelled "libertarian commitment codes" has heightened concerns about the due process rights of those involved in involuntary commitment procedures.¹⁹ Protection of those rights requires some form of judicial determination prior to commitment.²⁰

Discussions about the appropriate degree of judicial due process that should be involved in commitment procedures raise the question of whether attention to due process rights is wise. Attention to these rights increases judicial authority at the expense of professional authority. Addressing this question involves attention to both the objective quality of professional and judicial commitment procedures and to their psychological consequences. This discussion will focus on the psychological consequences of commitment hearings—i.e. on the therapeutic effects of the commitment process.²¹ One potential benefit of judicial hearings is that they result in objectively better outcomes. In addition, they may be psychologically beneficial to the person whose conduct is under review.

I. HOW PEOPLE ARE AFFECTED BY JUDICIAL HEARINGS

The first issue to be addressed is whether the type of judicial process that people experience influences them independently of the outcome of those procedures. In other words, are there things about a commitment hearing that affect people psychologically but are unrelated to the outcome of the procedure? Does the process itself have therapeutic implications? Legal psychologists have studied a wide variety of decision-making procedures, including jury trials, mediation hearings, arbitration hearings, settlement conferences, informal police-citizen interactions, and plea bargaining hearings, in an effort to understand what determines how people react to their dealings with legal authorities.²² Unfortunately, there are currently no direct examinations of commitment hearings. Nonetheless, the findings of these other studies have important implications for such hearings.

17. See *Parham v. J.R.*, 442 U.S. 584, 606 (1979).

18. See DAVID WEXLER, *THERAPEUTIC JURISPRUDENCE: THE LAW AS A THERAPEUTIC AGENT* (1990).

19. *Id.* at 165-87.

20. *Id.*

21. There is a large body of psychological literature dealing with the objective quality of the decisions reached through varying legal procedures, in particular the use of different types of juries. That literature will not be addressed in this paper. See Bersoff, *supra* note 5; JOHN MONAHAN & LAURENS WALKER, *SOCIAL SCIENCE IN LAW: CASES AND MATERIALS* 79 (2d ed. 1990).

22. See E. ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* (1988).

The psychological perspective on judicial hearings builds on the classic research of psychologist John Thibaut and attorney Laurens Walker.²³ Their studies examined how people evaluated the adversary and the inquisitorial trial procedures.²⁴ Their research focussed on procedural preferences, specifically the types of trial procedures that people wanted to use to settle their disputes.²⁵

The work of Thibaut and Walker stimulated a number of studies on the psychological consequences of personal experiences with legal authorities.²⁶ Of particular relevance are studies on the psychological consequences of participating in various aspects of the judicial system.²⁷ This body of work examines how people react to legal procedures after they have experienced them.²⁸ It differs from the work of Thibaut and Walker in its reactive character. Instead of choosing a procedure prior to experiencing it (i.e. expressing a preference), people react to a procedure that they have already experienced. Thus, they indicate their degree of satisfaction with the procedure used to deal with their problem.

Subsequent studies also differ from the work of Thibaut and Walker by placing greater weight on the study of real disputes.²⁹ The original Thibaut and Walker research utilized laboratory experimentation methods that were heavily criticized by the legal community.³⁰ The studies that will be examined here involve either surveys of people reporting on their personal experiences with judicial procedures or field studies of variations in legal procedures. Field studies of this type also involve an examination of people who have actually experienced different types of judicial proceedings.

The first important finding of studies of people's reactions to judicial procedures is that people are not primarily influenced by the outcome of their experience, i.e. by whether they win or lose their case, whether they go to jail or go free, or whether they pay a large fine or nothing.³¹ Further, studies suggest very little impact from the time it takes to resolve a case or the amount of money expended in the effort.³² The objective characteristics of the case disposition experience have very little psychological impact.³³ An example of these findings is the study by E. Allan Lind comparing bilateral

23. JOHN THIBAUT & LAURENS WALKER, *PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS* (1975).

24. *Id.*

25. *Id.* Thibaut and Walker also dealt with the objective quality of the decisions reached using different types of legal procedure. *Id.* However, their research on that topic will not be discussed in this article.

26. LIND & TYLER, *supra* note 22, at 13.

27. Tom R. Tyler, *The Role of Perceived Injustice in Defendants' Evaluation of Their Courtroom Experience*, 18 *LAW & SOC'Y REV.* 51 (1984) [hereinafter, Tyler, *Role of Perceived Injustice*].

28. See, e.g., TYLER, *supra* note 3 (evaluating how people react to their personal experiences with legal authorities).

29. See LIND & TYLER, *supra* note 22, at 13-40.

30. *Id.*

31. See E. Allan Lind et al., *In the Eye of the Beholder: Tort Litigants' Evaluations of Their Experiences in the Civil Justice System*, 24 *LAW & SOC'Y REV.* 953, 968-71 (1990).

32. *Id.* at 974.

33. *Id.* at 968-71, 975.

negotiation, mediation, settlement conferences, and trials.³⁴ That study found that the amount of money won or lost, the duration of the case disposition process, and the costs of the process to the litigant were all largely unrelated to judgments of fairness and satisfaction.³⁵

What does influence people is their assessment of the fairness of the case disposition process. People are most strongly affected by their evaluations of the procedure by which the outcomes are reached—i.e., by their evaluations of the judicial process itself.³⁶ In other words, people are affected by the way in which decisions are made, irrespective of what those decisions are. People are also influenced by judgments about the fairness of the outcome itself.³⁷

The relative importance of receiving a fair outcome or experiencing a fair procedure depends on the types of psychological consequence with which we are concerned. If we are concerned about personal reactions, reaction to the experience or the willingness to voluntarily accept judicial decisions, then people are affected by both the fairness of the outcome and, independently, by the fairness of the procedure.³⁸

Studies suggest that if the socializing influence of experience is the issue of concern (i.e., the impact of participating in a judicial hearing on a person's respect for the law and legal authorities), then the primary influence is the person's evaluation of the fairness of the judicial procedure itself, not their evaluations of the outcome.³⁹ Such respect is important because it has been found to influence everyday behavior toward the law.⁴⁰ When people believe that legal authorities are less legitimate, they are less likely to be law-abiding citizens in their everyday lives.⁴¹

Many of the studies alluded to deal with informal police-citizen interactions,⁴² and citizen experiences in small claims courts.⁴³ These studies focus on the experiences of ordinary citizens, whose primary interactions with the legal system typically involve informal contacts with the police and the courts.⁴⁴

Other studies have focused more directly on judicial hearings. The first is a recent study of felony criminal case disposition.⁴⁵ That study examined

34. *See id.* at 953-86.

35. *Id.* at 980-84.

36. *See* LIND & TYLER, *supra* note 22.

37. *Id.*

38. *Id.*

39. TYLER, *supra* note 3, at 94-112. *See* Tom R. Tyler et al., *Maintaining Allegiance Toward Political Authorities: The Role of Prior Attitudes and the Use of Fair Procedures*, 33 AM. J. OF POL. SCI. 629 (1989) (examining "the impact of experience with the criminal justice system on defendant attitudes toward legal authorities, law, and government) [hereinafter, Tyler, *Maintaining Allegiance*].

40. TYLER, *supra* note 3, at 4-5.

41. *Id.*

42. *Id.*; Tom R. Tyler & Robert Folger, *Distributional and Procedural Aspects of Satisfaction With Citizen-Police Encounter*, BASIC & APPLIED SOC. PSYCHOL. 281-92 (1980).

43. Tyler, *Role of Perceived Injustice*, *supra* note 27.

44. *See* TYLER, *supra* note 3; Tyler & Folger, *supra* note 42, at 281; Tyler, *Role of Perceived Injustice*, *supra* note 27.

45. *See* Jonathan Casper et al., *Procedural Justice in Felony Cases*, 22 LAW & SOC'Y REV. 483 (1988).

the impact of the case disposition process on both satisfaction with the case disposition process itself and on attitudes toward law and legal authorities.⁴⁶

Although those defendants received outcomes varying from a suspended sentence to twenty years in prison, the objective severity of the outcomes received was not found to influence overall reactions to the case-disposition experiences. Reactions to the case-disposition experience were influenced by: 1) the fairness of the sentence and 2) evaluations of the fairness of the case-disposition process. The impact of the case-disposition process on attitudes toward the legal system was found to be responsive only to evaluations of the fairness of the case-disposition process and not to judgments of distributive justice or to the objective severity of the outcome.⁴⁷

These findings about the felony case disposition process are important for several reasons. First, the deprivation of personal liberty involved is quite substantial. Second, the people involved are marginal members of society: poor, poorly educated, minority, unemployed; those who might be expected to care the least about questions of due process and the most about the favorability of the outcomes they have received.

A second set of findings are from a series of studies of civil tort case hearings conducted by the Rand corporation.⁴⁸ These studies examine the resolution of tort cases in settlement conference hearings, mediation/arbitration hearings, and formal trial hearings.⁴⁹ The findings of Lind et al., on arbitration in the federal courts are especially striking.⁵⁰ All of the cases they studied involved lawsuits over at least \$50,000 and some lawsuits involved amounts up to \$2,000,000.⁵¹ Yet they found that people's willingness to accept mediation decisions, instead of going on to have a formal trial, were affected by their evaluations of the fairness of the mediation session.⁵² Similar findings were obtained by Rand studies that examined the acceptance of arbitration claims in lawsuits over automobile injuries in New Jersey.⁵³ These findings suggest that civil, like criminal, proceedings are strongly influenced by people's evaluations of procedures.

The findings of the studies I have outlined are very supportive of the speculations of the Supreme Court in the cases I have already noted, *Goldberg v. Kelley*⁵⁴ and *Morrissey v. Brewer*.⁵⁵ Experiencing judicial procedures that are evaluated as unfair does influence people's respect for legal authorities

46. Casper, *supra* note 45, at 483-507; Tyler, *Maintaining Allegiance*, *supra* note 39, at 629-52.

47. Casper, *supra* note 45, at 483-507; Tyler, *Maintaining Allegiance*, *supra* note 39, at 629-52.

48. E. Allan Lind et al., *Outcome and Process Concerns in Organizational Dispute Resolution*, AM. B. FOUND. WORKING PAPER # 9109 (1991); Robert J. MacCoun et al., *Rand Institute for Civil Justice, ALTERNATIVE ADJUDICATION: AN EVALUATION OF THE NEW JERSEY AUTOMOBILE ARBITRATION PROGRAM* (1988).

49. See Lind, *supra* note 48; MacCoun, *supra* note 48.

50. Lind, *supra* note 48.

51. *Id.* at 1.

52. *Id.* at 29.

53. MacCoun, *supra* note 48, at 56-57.

54. 397 U.S. 254 (1970).

55. 408 U.S. 471 (1972).

and for the law. Further, it shapes people's behavior. People who have experienced a procedure that they judge to be unfair are not only less respectful of the law and legal authorities, they are less likely to accept judicial decisions and less likely to obey the law in the future. These findings point to the possibility of developing exactly the type of social malaise that the Supreme Court speculated might result from experiencing an "arbitrary" (i.e. unfair) procedure.⁵⁶

In their original discussion of procedural justice, Thibaut and Walker suggested that conducting a judicial proceeding using procedures that all parties to a dispute would regard as fair facilitates efforts to "resolve conflicts in such a way as to bind up the social fabric and encourage the continuation of productive exchange between individuals."⁵⁷ Similar concerns underlie the therapeutic jurisprudence movement. If people leave commitment hearings with favorable views about the legitimacy of legal authorities, such views are likely to facilitate the subsequent therapeutic process.

A. SUBJECTIVE NEUTRALITY

It is possible that people care about procedural justice but define it in terms of neutrality such as lack of bias, honesty, the use of expertise, and factual decision-making. If so, they share the concern with factors shaping the objective decision-making quality that has influenced judicial holdings such as *Parham v. J.R.*⁵⁸

Studies indicate that people focus on lack of bias, honesty, and factual decision-making.⁵⁹ Each of these aspects of a judicial procedure has some influence on judgments of the procedure's fairness.⁶⁰ In addition, people are more likely to indicate that a procedure is fair if it yields them a favorable outcome.

What is interesting is not that the neutrality of a judicial procedure matters—neutrality is after all a core element of procedure that forms the central concept in most textbooks on legal procedure. What is interesting is that there are other aspects of procedures that are more important determinants of people's judgments about procedural fairness. Three such elements will be considered: participation, dignity, and trust.

1. Participation

Studies of people's reactions to judicial procedures consistently find that people regard procedures in which they are allowed to participate as fairer.⁶¹ Participation can involve the presentation of evidence and one's own views

56. *Goldberg*, 397 U.S. at 265.

57. See THIBAUT & WALKER, *supra* note 23.

58. 442 U.S. 584 (1979).

59. See TYLER, *supra* note 3, at 6-7.

60. See Tom R. Tyler & E. Allan Lind, *A Rational Model of Authority in Groups*, in 25 *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* 115, 137-66 (Mark P. Zanna ed., 1992) (discussing existing research on characteristics that make procedures appear fair and addressing features that affect procedural justice judgments).

61. See LIND & TYLER, *supra* note 22.

(voice or process control), shared decision-making (decision control), or both.⁶² Studies suggest that either form of participation enhances feelings of fair treatment.⁶³

It is not particularly surprising that people value shared control over decisions. Such shared control gives them influence over the outcome of the procedure. It is also not surprising that people value the opportunity to present evidence and express their views. They no doubt feel that this opportunity to present evidence allows them to influence indirectly judicial decisions through persuading the mediator or judge of the validity of their perspective.

What is interesting is that people value the opportunity to present their arguments and state their views even when they indicate that what they say is having little or no influence over the third-party authority.⁶⁴ The most striking example of this effect is found in studies allowing people to present their evidence after a decision has been made.⁶⁵

Imagine that you are invited to visit another university because you are being considered for a job. When you arrive your host says that he or she has good news and bad news. The bad news is that someone else has already been hired to fill the job. The good news is that you can still demonstrate how good you would be for the job by giving a job talk. Would you think that you were being more fairly treated than you would if you were simply told that the job had been filled? Interestingly, the answer is yes. In fact, people do place a value on the opportunity to present evidence that is not linked to the influence of that evidence on decisions.

Obviously this example is extreme. Typically the message people receive from authorities is much less straightforward. But the extremity of the example makes the point clear; people do not want to state their opinions simply because they believe that their arguments will influence third-party decisions. Presenting arguments to a third-party has value in and of itself.

2. Dignity

A second important finding of psychological research on people's reactions to their dealings with legal authorities is that people care how they are treated by legal authorities.⁶⁶ In other words, they respond to whether they are treated with respect, politeness, and dignity, and whether their rights as citizens are acknowledged.⁶⁷ People value the affirmation of their status by legal authorities as competent, equal, citizens and human beings, and they

62. *Id.*

63. *Id.*

64. *Id.*

65. E. Allan Lind et al., *Voice, Control, and Procedural Justice: Instrumental and Noninstrumental Concerns in Fairness Judgments*, 59 J. PERSONALITY & SOC. PSYCHOL. 952, 952-59 (1990).

66. See TYLER, *supra* note 3; Tyler & Folger, *supra* note 42; Tyler & Lind, *supra* note 60.

67. See Lind, *supra* note 31; TYLER, *supra* note 3; Tyler & Folger, *supra* note 42; Tyler & Lind, *supra* note 60.

regard procedures as unfair if they are not consistent with that affirmation.⁶⁸ To understand the effects of dignity, it is important to recognize that government has an important role in defining people's views about their value in society. Such a self evaluation shapes one's feelings of security and self-respect.⁶⁹

3. *Trust*

Finally, people value evidence that the authorities with whom they are dealing are concerned about their welfare and want to treat them fairly.⁷⁰ Trust is the most important quality, but also the most elusive, because it involves a motive attribution.⁷¹ In other words, people must infer whether an authority is or is not motivated to treat them fairly based on that authority's actions.

What influences whether people regard authorities as trustworthy? One factor is participation. People regard authorities who allow them to present evidence as more trustworthy.⁷² Similarly, people regard authorities who treat them with dignity and respect as more trustworthy.⁷³ Finally, the efforts of authorities to explain or account for decisions heighten judgments of trustworthiness.⁷⁴

Concerns about trustworthiness reflect a desire to understand the future actions of authorities.⁷⁵ Since people typically believe that motives are stable and unchanging over time, knowledge of the motivations of authorities allows the authorities' future actions to be predicted.⁷⁶ If people infer a benevolent disposition in some authority, they can trust that, in the long-run, an authority will behave in ways that serve their interests.⁷⁷ For this reason trust is a key component of legitimacy.⁷⁸

The importance of trustworthiness helps to explain an important limitation to the participation effects that have been outlined. People generally feel more fairly treated if they can present evidence, even when they think their evidence does not affect the decisions made by the third party. However, this effect does not occur if people do not believe that their evidence was considered by the third party. Without considering their arguments, people believe that the authority cannot be acting benevolently, and no effect occurs.

The role of trustworthiness also leads to another important conclusion of the study of procedures. Structural features of procedures, such as the pro-

68. See Tyler & Lind, *supra* note 60, at 139-43.

69. Robert Lane, *Procedural Goods in a Democracy: How One is Treated v. What One Gets*, 2 Soc. JUST. RES. 177-92 (1988).

70. See Tyler & Lind, *supra* note 60, at 139-43.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. BERNARD BARBER, *THE LOGIC AND LIMITS OF TRUST* (1983).

vision of a right to appeal, may or may not shape people's feelings about authorities. The key issue to those affected by procedures is whether the authority involved is attempting to be fair in the implementation of rules.⁷⁹ Without such a belief the simple existence of structures associated with fairness does not enhance perceived fairness.⁸⁰ On the other hand, people can experience "unfair treatment" such as sexism or racism without reporting that the procedures involved were unfair if they infer that the authorities involved are motivated to treat them fairly.⁸¹

B. SUMMARY

People's evaluations of the fairness of judicial hearings are affected by the opportunities which those procedures provide for people to participate, by the degree to which people judge that they are treated with dignity and respect, and by judgments about the trustworthiness of authorities. Each of these three factors has more influence on judgments of procedural justice than do either evaluations of neutrality or evaluations of the favorableness of the outcome of the hearing.

II. THE PSYCHOLOGY OF JUDICIAL HEARINGS

Why do those who experience judicial hearings react to issues of participation, dignity, and trustworthiness? The answer lies in recognizing the important role that legal and political authorities play in defining peoples' feelings of self-esteem, self-worth, and their sense of personal security.

In a study of the citizens of Chicago, people were found to recognize a widespread occurrence of injustice when citizens dealt with the police and courts.⁸² Yet the same people almost universally indicated that they believed the authorities would treat them fairly if they personally dealt with them.⁸³ Tyler and Lind label this belief the "illusion of personal justice" because it reflects a strong belief in one's own invulnerability to unfair treatment.⁸⁴ Faye Crosby identified a similar unwillingness to recognize that one is a victim of discrimination, which she labels "comfortable ignorance."⁸⁵ In each case, people resist the belief that they are vulnerable, instead seeing themselves as linked to personally benevolent authorities.⁸⁶ When people deal with authorities, they open these beliefs to possible disconfirmation.⁸⁷

79. Tom R. Tyler & Robert Bies, *Interpersonal Aspects of Procedural Justice*, in APPLIED SOCIAL PSYCHOLOGY IN BUSINESS SETTINGS (J.S. Carroll ed., 1990).

80. See Tyler & Lind, *supra* note 60, at 139-43.

81. See TYLER, *supra* note 3, at 91-92.

82. See Tyler & Lind, *supra* note 60, at 144-58.

83. *Id.*

84. *Id.* at 155.

85. Faye Crosby, *Relative Deprivation in Organizational Settings*, in 6 RESEARCH IN ORGANIZATIONAL BEHAVIOR (L.L. Cummings & Barry M. Staw eds., 1984); see also Faye Crosby, *The Denial of Personal Discrimination*, in AMERICAN BEHAVIORAL SCIENTIST 371; Faye Crosby & Donna Nagata, *Denying Personal Advantage* (paper presented at the annual meeting of the International Society of Political Psychology, Washington, D.C.) (1990).

86. Tyler & Lind, *supra* note 60, at 155.

87. *Id.* at 155 n.19.

The importance of self-respect and self-worth is indicated by the centrality of those issues to people's reactions to their experiences with authorities. People may initially approach authorities instrumentally, but they react to their experiences by focusing on their implications for the social bond linking people to authorities.⁸⁸

The legal system is one aspect of the larger society, so legal authorities provide people with information about their standing both in the eyes of the law and in society more generally. Research shows that people care about their status and react to their experiences in terms of their implications concerning that status.⁸⁹ In contrast, people's concerns about traditional issues such as lack of bias, honesty, factual decision-making, and obtaining favorable outcomes, while important, have less influence on people's judgments regarding the fairness of their experiences.⁹⁰

A. COMMITMENT HEARINGS

I have discussed a number of studies examining the psychology underlying people's reactions to their dealings with legal authorities. None of these studies directly examines commitment hearings. However, they do examine a variety of legal procedures, including mediation/arbitration hearings, trials, and plea bargaining, which share many basic characteristics with commitment hearings.

The key question is what implications can be drawn from this literature regarding the therapeutic consequences of personal experiences with legal authorities. One implication is that people respond to how decisions are made—a response that is not simply linked to what decisions are. Hence, the psychological arena defined by the Supreme Court in cases such as *Goldberg v. Kelly*⁹¹ and *Morrissey v. Brewer*⁹² clearly exists.

Failure to receive due process has a number of negative consequences for people who have personal experiences with legal authorities, including reluctance to accept decisions, diminished respect for the judge, mediator, or other third party, diminished respect for the courts and the legal system, and a diminished willingness to follow legal rules.⁹³ These effects are completely consistent with the suggestion that experiencing arbitrary procedures leads to social malaise and decreases people's willingness to be integrated into the polity, accepting its authorities and following its rules.

Of particular relevance to the question of therapeutic implications is the issue of behavior. Enhancing respect for authorities, the willingness to voluntarily accept the decisions of authorities, and the willingness to follow social rules are core objectives of any therapeutic program. Hence, it seems likely that future studies of the therapeutic consequences of judicial hearings

88. See William Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 *LAW & SOC'Y REV.* 631 (1973).

89. See Tyler & Lind, *supra* note 60, at 144-66.

90. *Id.*

91. 397 U.S. 254 (1970).

92. 408 U.S. 471 (1972).

93. See TYLER, *supra* note 3.

will demonstrate that commitment hearings experienced as unfair by those potentially being committed will have strongly antitherapeutic consequences.

The findings of studies about fair process have especially important implications for the study of commitment hearings. Judicial hearings in general are clearly used by people to gain information about their status as members of society. Perhaps no type of hearing more directly threatens a person's belief that they are an equal member of society than a mental commitment hearing. Given the stigma attached to "insanism,"⁹⁴ the label "mentally incompetent" is truly a threat to individual's ability to define themselves as an equal member of society.⁹⁵ Many groups affected by judicial and administrative hearings, welfare recipients, prisoners, and students are socially marginal in some respects. For those and other groups the issue of mental competence is central to issues of self-respect and security in society.

B. PROFESSIONAL VS. JUDICIAL DECISION-MAKING

The psychological perspective that has been outlined highlights the importance of conducting judicial hearings in ways that will have positive psychological consequences on those who undergo commitment hearings. In other words, it is clearly beneficial for personal experiences with judicial authorities to contribute to developing psychological and behavioral characteristics that enhance the therapeutic process. The enhancement of such attitudes and behaviors will, of course, be beneficial irrespective of the disposition of the case (i.e., whether the person involved is or is not committed to a mental institution).

It is also important to note, however, that the characteristics of a hearing that are associated with fairness can be enacted by either judicial or professional decision-makers. In other words, the psychological research reviewed suggests that people will benefit from hearings in which they can participate, in which they are treated with dignity, and in which they believe that they are dealing with trustworthy authorities who are motivated to be fair to them. It seems possible to design either judicial or professional decision-making procedures, or both, so that they will have the characteristics of "fair" decision-making procedures.

The findings outlined are consistent with the suggestion of the therapeutic jurisprudence literature that hearings which lack the characteristics which people associate with due process are likely to be experienced as unfair.⁹⁶ Such unfairness, in turn, is likely to have negative consequences for the subsequent therapeutic process. However, it does not point to judicial hearings as the only possible source of procedures that people will experience as unfair. It is also possible that professionals could develop procedures containing some of the elements that have been outlined. If they did so, then professional decision-making procedures might also be therapeutic. It is an

94. See Michael L. Perlin, *On "Sanism"*, 46 SMU L. REV. 373 (1992).

95. *Id.*

96. See Wexler, *supra* note 18.

empirical question, as yet unanswered, whether mental health professionals could conduct commitment proceedings in ways that would lead people to feel that their views were being considered, that they were being treated with dignity and respect, and that they were dealing with trustworthy authorities.

C. OBJECTIVE AND PSYCHOLOGICAL CRITERIA FOR PROCEDURAL EVALUATION

There are two distinct issues that need to be considered in evaluating civil commitment procedures. The first is the ability of a procedure to make accurate decisions. Bersoff has outlined the problems, including bias, with professional decision-making in great detail.⁹⁷ If future studies indicate that professional decision-making is more subject to such biases and consequently less accurate than judicial decision-making, then accuracy concerns would favor judicial decision-making.

Distinct from accuracy issues are concerns about the psychological impact of procedures, in particular their potential impact on future therapeutic processes. If people become estranged from authority, distrusting others; believing that they are vulnerable, and hence feeling insecure; and lacking in feelings of self-worth, these consequences are disadvantageous and preferably could be avoided. Historically, many of these negative psychological consequences have occurred in the context of professional commitment hearings. Judicial hearings, which have been more sensitive to issues of due process, may have more positive psychological consequences. Ultimately, decisions about the desirability of different judicial procedures need to be responsive to both the objective quality of the decisions made and to the psychological consequences of varying types of decision-making procedure.

97. Bersoff, *supra* note 5.

Article

