Research Note

THE CATALYTIC EFFECT OF A FEDERAL COURT DECISION ON A STATE LEGISLATURE

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This paper examines the way in which a United States district court decision in Texas catalyzed state legislation in that state. The events leading from the decision to the enactment of the statute are chronicled. The paper also describes the processes of bargaining and cooperation among the major actors who used the decree to obtain the new legislation. In the conclusion, factors that facilitated the catalytic impact of the judicial decision are discussed.

In theory, the study of judicial impact embraces all results and consequences of a court decree. In fact, most scholars who have studied the effects of judicial decisions have evaluated impact in terms of compliance or the implementation of judicial policies (Wasby, 1970; Milner, 1971; Dolbeare and Hammond, 1971; Wasby, 1976; Johnson and Canon, 1984). Few researchers have explored the ways in which judicial policies may catalyze state legislation. A notable exception is Churgin (1982), who has examined the events that led from a federal district court decree to a new state law. Churgin, however, gives little consideration to the processes of bargaining and cooperation among the individuals and groups who sought the legislative change. The ways in which bargaining can influence governmental policy-making have been virtually ignored in the judicial impact literature, although the importance of bargaining is well recognized in the broader political science literature (Neustadt, 1960; Lindblom, 1959; Weinberg, 1977).

In this paper, the events leading from a federal district court decision, *Luna v. Van Zandt*, to the enactment of a statute by the Texas legislature are chronicled. Unlike other

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investigations of judicial impact, this study also describes the processes of bargaining and cooperation among the major actors who obtained the new legislation. This study also differs from most judicial impact research in that *Luna* involves a relatively modest legal mandate, a requirement of a "mini-hearing" for psychiatric patients in Texas within 72 hours of involuntary confinement. Most empirical research on judicial impact has concerned controversial decisions requiring major policy changes at the state or federal level. It is possible, however, that in the aggregate cases like *Luna* are more influential than the grand decisions that have drawn the special attention of the research community.

I. *LUNA V. VAN ZANDT*

In Texas, until *Luna v. Van Zandt*, individuals thought to be mentally ill and likely to cause injury to themselves or others could be held involuntarily in "protective custody" as psychiatric inpatients in public or private hospitals for up to 14 days without a commitment hearing. All that was required was a judge's order, following the filing of a commitment application accompanied by at least one physician's certificate. In January 1978, Santiago Luna filed a lawsuit in the United States District Court for the Southern District of Texas in Brownsville challenging the constitutionality of Texas' protective custody procedures. He alleged that his due process rights had been denied by his involuntary containment for 12 days in the Rio Grande State Center for Mental Health and Mental Retardation in Harlingen, Texas, without any commitment hearing before the county court. The defendants named in the suit were past and present board members and past and present commissioners of the Texas Department of Mental Health and Mental Retardation (TDMHMR). In December 1980 the suit was certified as a class action suit.

After nearly two more years, on November 24, 1982, United States District Court Judge George Kazen ruled that Santiago Luna had been denied due process. He declared unconstitutional all sections of the Texas Mental Health Code that allowed individuals to be detained in protective custody for longer than 72 hours without notice and an opportunity for a probable cause hearing with an attorney present. He also enjoined the defendants from confining any member of the plaintiff class in protective custody for longer than 72 hours unless certain conditions were met. Judge Kazen ruled that the following minimum safeguards were necessary:

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(1) the patient must be given an opportunity to challenge the allegation that he is dangerous;
(2) service on the patient and his attorney of written notice that he has been placed under protective custody and the reasons why such order was issued;
(3) an independent decisionmaker (*Luna*, 554 F. Supp. 68, 76).

II. INITIAL RESPONSE TO *LUNA*

On December 8, 1982, the defendants responded to the *Luna* ruling. They were represented by the assistant attorney general in the Texas Attorney General's Office who defended the majority of the state's mental health cases. Largely on the basis of a United States Supreme Court decision (*Briggs v. Arafeh*, aff'g *Logan v. Arafeh*) that approved psychiatric commitment hearings as late as 45 days after confinement, the assistant attorney general appealed the *Luna* judgment to the Fifth Circuit Court of Appeals. In addition, she asked Judge Kazen to stay his order pending the ruling of the Fifth Circuit. In the event that the Fifth Circuit did not overturn the ruling, the Texas legislature would need time to pass legislation amending the state's mental health code to conform with the *Luna* ruling, and the legislature, which meets biennially, was not to convene until January 11, 1983. The defendants were concerned that, until replacement legislation was passed, the state would be unable to hold any probable cause hearings related to orders of protective custody. Despite these arguments, Judge Kazen, on December 20, 1982, issued an order reiterating his finding that to commit members of the plaintiff class in protective custody would be a "massive curtailment of liberty requiring due process protections." The stay would substantially harm the class members, he maintained, and he thus refused to grant it. However, he postponed the compliance date until January 27, 1983.

In the next several weeks, no other major activity occurred in response to *Luna*. There were two reasons for this lull. First, only the defendants and a few key individuals involved in mental health issues in the state knew about the decision. Because the defendants were confident that the decision would be overturned by the Fifth Circuit, they didn't alert many people to its holdings. Second, a new slate of elected state officials, including a new attorney general, was to be seated in January, and the outgoing administration was not issuing new policy directives. In this case, the assistant attorney general could not secure a directive on what action to take.

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III. REACTION OF THE COUNTY JUDGES

Public reaction to *Luna* began when a handful of Texas county judges learned of it. On January 5, 1983, the TDMHMR's director of legal services sent a memo about the case to the superintendents and directors of all its mental health facilities. This memo assumed that the "independent decisionmaker[s]" specified by Judge Kazen would be the county judges who handled all psychiatric commitments in Texas. It instructed the mental health officials that a 72-hour probable cause hearing in a county court was now necessary before an individual was sent to a mental health facility. If a committing court did not hold a hearing prior to commitment, the court would have to retrieve the person from the facility within 72 hours to hold the hearing. If no hearing was held within the 72-hour period, the facility would have to discharge the person to the court.

In mid-January mental health facility personnel showed this memo to several metropolitan area county judges, who then contacted other metropolitan area judges. They reacted with alarm. First, they did not know whether the Fifth Circuit would uphold or reverse *Luna*. Second, most of these judges were already in the habit of holding final commitment hearings well before the 14-day limit. Although they strongly wanted to retain the responsibility for all psychiatric hearings, they did not want to be burdened by what they viewed as unnecessary bureaucratic procedures. Finally, most of them were concerned about the January 27 compliance date.

This small group of judges, therefore, developed a coordinated strategy. Most threatened to stop issuing orders of protective custody. Several of them voiced their threats in press conferences. One judge in Houston was quoted in a widely distributed newspaper as saying that he would stop signing protective custody orders by January 25. Furthermore, he would hold as many commitment hearings as possible before January 27 on patients held in Harris County hospitals on orders of protective custody. "If they don't go to trial by that time," he said, "they will have to be released." In addition, several of the judges contacted state legislators to voice their concerns. The opposition of the county judges, however, was temporary if vehement. Although they viewed the new hearings as unnecessary and burdensome, they were not opposed to quick hearings on principle.

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IV. ENVIRONMENT IN WHICH *LUNA* WAS EMBEDDED

At the time that *Luna* was handed down, the Texas Mental Health Code Task Force was winding up its meetings. This 45-member body, which had been created by a resolution of the Texas Board of Mental Health and Mental Retardation, began meeting in December 1981 to study the Texas Mental Health Code and to recommend changes in it to the Texas legislature. When *Luna* was handed down, the Task Force, consisting of representatives of consumer groups, state agencies, government offices, professional organizations, and other groups with mental health interests, was sharply divided over a number of issues.

One issue over which members were divided was the criterion for commitment. Because this criterion would appear a number of times in the new code, its wording was particularly important to Task Force members. The more service-oriented advocates, represented especially by the doctors, favored the existing criterion, which justified commitment on orders of protective custody when "the person is likely to cause injury to himself or others." In contrast, the more civil liberties-oriented Task Force members, particularly the attorney members, favored a criterion that would allow orders of protective custody only when a person was physically dangerous.

The chairperson of the Task Force was one of the state's most prominent mental health leaders. Her husband was a leading state senator. The Task Force hoped he would sponsor legislation for a new mental health code in the next legislative session, and he had "loaned" the Task Force a member of his staff to translate its proposals into a bill. This staffperson, a man trained as an attorney and psychologist, was extremely knowledgeable about mental health law and civil commitment. The chairperson, her husband, and the attorney-psychologist felt that the legislative response to *Luna* might help break the deadlock in the Task Force over the wording of the commitment criterion. Given the *Luna* timetable, these leading actors thought that they could probably get a law on protective custody designated by the governor as emergency legislation—the only legislation that can be passed in the first 60 days of a Texas legislative session. If so, the wording of the commitment provision would offer an obvious and legislatively approved model for the protective custody sections of the new Mental Health Code.

In many communities in Texas, especially rural ones, persons who were involved with alcohol or in family disputes

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or other such problems were frequently sent to a state hospital hundreds of miles away without first being evaluated by a judge. The chairperson, the staffperson, and the senator also approved of the holding in *Luna* because they saw it as having the potential effect of stimulating community-based alternatives.

Since there was only a short time remaining before the *Luna* compliance date, the chairperson, staffperson, and senator felt that the best way they could obtain legislation quickly was to work without involving the entire Task Force. Thus, their decisions were made without an attempt to secure consensus from the larger Task Force. A major benefit of the Task Force tie-in, however, was that they were perceived in their negotiations as speaking for the Task Force.

V. NEW LEGISLATION EMERGES

Writing the Bill

The sixty-eighth session of the Texas legislature convened on January 11, 1983, only 16 days before the date set by Judge Kazen for compliance with *Luna*. The staffperson began writing a bill at the outset of the session with the aid of the assistant attorney general, who was also a member of the Task Force. The staffperson wanted the bill to achieve three objectives: (1) to include the 72-hour probable cause hearings ordered by Judge Kazen, (2) to specify who would preside over the hearings, and (3) to supply wording on the commitment criterion that could apply later to the protective custody sections of the new Mental Health Code.

No one seriously challenged the necessity of including the 72-hour hearings, so they were written into the bill without negotiation. The staffperson then had telephone conversations with a number of individual judges and a conference call with 11 of them to help him determine who would preside over the hearings. The approval of the county judges was considered particularly important because they strongly wanted to maintain control over the hearings, and the drafters of the bill did not want the judges on the other side when the bill reached the legislature. But others also made suggestions about who should hold the hearings. Several attorneys on the Task Force, concerned that the *Luna* holding could be interpreted so as to permit a TDMHMR staffperson to be the independent decisionmaker, were determined that the hearing officer be in no way affiliated with TDMHMR. In fact, the TDMHMR

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indicated it did not want the additional obligation. It was agreed that either a magistrate or master appointed by the county court would conduct the hearings.

Next, the staffperson incorporated into the bill wording for the commitment procedures that was suggested by the chairperson and senator. This provided that both initial detention and involuntary confinement in excess of 72 hours would be warranted only if due to mental illness a person presented a "substantial risk of serious physical harm to himself or others."

The staffperson also negotiated and bargained with other people interested in the legislation. For example, upon learning that another senator was planning to sponsor a similar bill, he began working with that senator's staff so they could mesh their bills. He also gained the support of the senator who chaired the Senate Human Resources Committee, which would hear the bill. In addition, the staffperson talked several times with the plaintiffs' attorney in *Luna* to be sure the attorney would be satisfied with the legislation.

Passing the Bill

The bill was introduced into the Human Resources Committee of the Senate on January 21 as SB 213, sponsored by the senator with Task Force connections. It was heard on January 25. The sponsoring senator, the assistant attorney general, and the committing judge from Austin all testified in favor of the bill. The Texas Medical Association (TMA) and the Texas Psychiatric Association testified in qualified support: they wanted the word "physical" deleted from the wording of the commitment criterion. But the Committee approved the bill as written on the same day, and it passed the full Senate the next day. The bill passed the Senate so quickly because the senator chairing the Human Resources Committee expedited it at every opportunity.

The bill was introduced into the Judiciary Committee of the House on the same day the Senate approved it. At this point, the Texas Medical Association again dissented from the wording of the commitment criterion. The TMA wanted to use the current code's language, which was "likely to cause injury." The TMA might have taken steps to kill the entire bill at this point. However, because emergency legislation was needed immediately and there was the potential for wide media coverage, blocking the bill would have put the TMA in a bad light. Thus, TMA representatives and the staffperson and

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chairperson met together and negotiated an agreement not to go back to the old code's language but to drop the word "physical" from the bill's language. The commitment criterion was amended to read "substantial risk of serious harm." There were no other major changes in the bill. All parties were satisfied, so only the staffperson testified in the House. The bill was heard on February 7, approved on February 10, and passed by the full House on February 16.

An important reason why this response to *Luna* passed both chambers without serious challenge was that *Luna*, unlike many other court decrees affecting mental health policy, called for changes that were seen as imposing on the state few if any financial burdens. A fiscal note attached to the bill indicated that SB 213 would not require additional state expenditures—that the counties rather than the state would have to bear the additional cost of the 72-hour hearings. The fiscal note also observed that the state might save money since as a result of the hearings patients might be released "who would otherwise be detained pending a commitment hearing."

The Governor Acts

In Texas the governor must attach an emergency declaration to a bill for it to become law in the first 60 days of a session. The chairperson therefore contacted an aide who informed the governor about the situation. On the basis of this contact, the governor attached an emergency declaration to SB 213 on February 2.

Requests for Stays

Meantime, it had become apparent that even if the bill were passed as emergency legislation, it would not meet Judge Kazen's compliance deadline of January 27. Thus, on January 14 the assistant attorney general filed a motion with the Fifth Circuit asking for a stay of the district court's order pending the appeal of *Luna*. Among her arguments she raised the strong probability that the legislature would soon enact "a statute providing for hearings similar to those required by the court's order." On January 20 the Court of Appeals denied the request for the stay, and on the same date the Attorney General's Office filed a motion for reconsideration of its request for a stay, saying that emergency legislation would be introduced on January 24. On January 24 the court again denied the stay. Instead, it encouraged the defendants to

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inform Judge Kazen of the impending legislation and to ask him to reconsider granting a stay.

So on January 25, the day before the bill was approved by the Senate and introduced into the House and two days before Judge Kazen's implementation deadline, the assistant attorney general met with Judge Kazen and the plaintiffs' attorney to ask for a limited stay of 30 days. The plaintiffs' attorney by now had talked with the staffperson and assistant attorney general numerous times on the phone about the bill and had agreed to the stay. Judge Kazen, assured that the legislation would be enacted and having the approval of the plaintiffs' attorney, agreed to stay his order for a period of 30 days, from January 27 until February 28. The emergency legislation went into effect on the following day, March 1, 1983, and on the same day the defendants moved for a dismissal of the appeal.

VI. CONCLUSIONS

The data presented in this paper describe the bargaining and cooperation of the major actors who obtained the passage of a law changing preliminary mental health commitment procedures in Texas. Among these actors were an insistent lower court judge with a short deadline for implementation, a supportive appellate court, a mental health task force comprising local elites, its chairperson with a fortuitous relationship to a key legislator, the media, the state legislature, and other actors such as the county judges, a knowledgeable staffperson, and the parties and their attorneys.

The combination of the actors and situations appears to have been ideal for the passage of SB 213, yet such legislation might have passed even in the absence of certain of these factors. For example, although it was fortunate that the Task Force was meeting, its chairperson might have been able to obtain passage of a bill solely on the basis of her Senate connections. And even without her participation, the county judges probably had enough legislative connections of their own to secure passage of a bill.

Some factors, however, were necessary to obtaining new legislation. Foremost was the fact that SB 213 promised not to cost the state any additional revenues. The resistance of state legislatures to passing expensive reform packages is well known (Moss, 1984). Media coverage was another necessary factor. Although the actual media coverage achieved by the county judges quickly abated, the potential of adverse coverage was a very clear threat to a number of actors, including the

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governor and legislators. In addition, it influenced the bargaining and compromise that went on about what to include in the bill, particularly on the commitment wording (cf. Johnson and Canon, 1984). It was also necessary that the legislature be in session. This, of course, would not be problematic in states that have legislatures that meet year-round. Finally, a determined judge and supportive appellate court were probably critical. The importance of an insistent judge has been described in many studies on implementation (Harris and Spiller, 1977; Churgin, 1982; Moss and Zurcher, 1983). The judge in this case astutely used the convening of the legislature as a powerful bargaining vehicle. An interesting but unanswerable question is: What would he have done had the legislature not been scheduled to convene for another year?

The data suggest that bargaining and cooperation among individuals and groups are important factors in determining whether and how a judicial decree will affect the status quo. Given the dearth of research on bargaining and cooperation in the judicial impact literature, however, and considering the relative insignificance, both financially and symbolically, of *Luna*, it is not appropriate to reach any general conclusions about how court decisions come to catalyze legislation. It is, however, interesting to see how the process worked in one instance; and it is important to realize that the impact of lower court decisions in relatively noncontroversial matters is a subject worthy of study.

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