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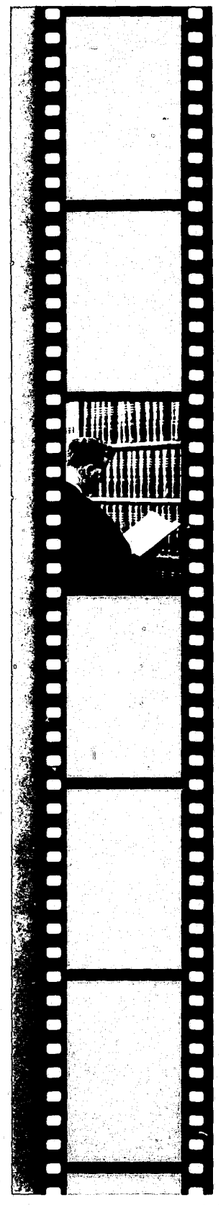

CRIME FILE

Insanity Defense

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Your discussion will be assisted by your knowing some of the reasons that have been offered for having an insanity defense, some of the insanity defense tests that have been developed by the courts, and what happens to persons found not guilty by reason of insanity.

Why a Defense of Insanity?

Many reasons for the defense have been offered, most turning on the strong and widespread sentiment that a person should not be punished for what he cannot help doing. If his criminal act is part of an illness, it seems unjust to punish him for what the illness causes him to do. Put another way, the criminal law exists to inhibit and to punish wrong choices by people: if there was no freedom of choice, there should be no punishment.

There is no medical definition of insanity. "Insanity" is a legal term that varies with the question to be decided. Is he so insane that he cannot make a valid will? Is he so insane that he should be civilly committed? Is he so insane that he cannot be tried for his alleged crime? Reflection will reveal that different legal standards should apply to the answer to each of these questions.

For example, the defense of insanity examines the accused's responsibility for his conduct *at the time of the alleged crime*. By contrast, his competency to plead to the charge and to be tried turns on his state of mind *now*, not *then*. The focus is on whether he now knows what a trial is and whether he has some ability to consult with his lawyer, and not whether he is legally responsible for his allegedly criminal conduct. Although the same psychiatric testimony may be relevant to questions of insanity and of competency to stand trial, they are necessarily different questions.

Doctors and psychiatrists and psychologists make little use of the term "insanity," except for legal purposes. For medical purposes they name particular diseases and their treatments, often classifying the more serious diseases as psychoses and the less serious as neuroses and personality disorders.

There is little agreement among legal commentators on the purposes to be served by the insanity defense or on the tests to be applied by the jury to determine whether the accused was insane at the time of the alleged crime.

The most frequently quoted statement of the reason for an insanity defense is Judge David Bazelon's in the *Durham Case*: "Our collective conscience does not allow punishment where it cannot impose blame." In practice, it may be hard to go much further than to say that we do not wish to "blame," and therefore punish, the "sick."

The American Law Institute, in drafting its *Model Penal Code*, put the point like this: "The problem is to discriminate between the cases where a punitive-corrrectional disposition is appropriate and those in which a medical-custodial disposition is the only kind that the law should allow."

You may well come to the view that neither lawyers nor doctors offer much help in answering the question of why there should be a defense of insanity—and if you have, you are right. They do not have much to give.

Let us turn then to a question on which there is more reliable guidance.

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How Frequently Was the Defense of Insanity Successfully Pleaded?

Compared with a total prison population in 1984 of some 463,000, fewer than 4,000 persons were held in mental hospitals because they had been adjudged "not guilty by reason of insanity." The defense of insanity is, thus, a relatively rare plea, generally advanced only in serious cases and where there is no other reasonably valid defense. The view of some of the public that the insanity defense is a piece of legal chicanery by which many people—particularly if they are wealthy—routinely escape punishment, is both uninformed and simplistic.

While the defense of insanity is not confined to the charge of murder, it is most often used as a defense to this charge. One reason for this is that, under recent case law, a person found not guilty by reason of insanity may be held in a mental hospital longer than if he had been convicted and sentenced for the maximum possible lawful term. This provides a strong disincentive to use of the plea except in extreme cases, particularly cases where capital punishment may be a possibility.

The Legal Definitions of Insanity

The insanity defense is recognized in the Federal system and in all States except Montana and Idaho. Eight States provide another related defense, "Guilty But Mentally Ill," which is considered below.

The insanity defense tests that have evolved in the Federal system reflect most of the different practices of the various States. Until 1984 the Federal tests of insanity were all "judge-made" law. Congress provided for such a defense but did not define it. The basic test was taken from English law and in particular from an English case, that of *M'Naghten* in 1843:

> to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.

This test became known as the "right-wrong" test and is still the basis for contemporary tests. Some glosses and qualifications have been added over the years.

In 1897, the Federal courts (and later many of the States) added the "irresistible impulse" test to the "right-wrong" test. By this test the accused could be found not guilty by reason of insanity if he had a mental disease which prevented him from cor trolling his conduct. This was an easy idea to express but difficult to apply. In the Crime File program, first the moderator and then the other discussants refer to this as the "volitional" (or ability to control) element in the defense of insanity, as distinct from the "cognitive" (the ability to know) element in the *M'Naghten Rule*.

From 1954 to 1972 the Federal system experimented with the *Durham Rule*—a quite different test of insanity. That test was simple:

> An accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect.

In 1972 the Federal system rejected the *Durham Rule* and adopted the substance of a defense of insanity recommended in the *Model Penal Code*. The latter test remains in effect in half the States. However, in the wake of the decision that John Hinckley should be found not guilty by reason of insanity for his attack on President Reagan, the *Model Penal Code* test is increasingly subjected to legislative restriction. The Federal case that shaped the law under which John Hinckley was tried was *United States v. Brawner*.

Here is some of the language of the *Brawner Court*, rejecting the *Durham Rule* and adopting a version of the *Model Penal Code's* test:

> A principal reason for our decision to depart from the *Durham Rule* is the undesirable characteristic...of undue dominance by expert testimony...The difficulty is rooted in the circumstance that there is no generally accepted understanding, either in the jury or the community it represents, of the concept requiring that the crime be the "product" of the mental disease...

The form of this test that was adopted in *Brawner*, and under which John Hinckley was later tried, was:

> A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.

This test dominated Federal and State practice until the Hinckley Case and is still the rule for about half the States. As you see, it speaks of *substantial* capacity to know and *substantial* capacity to control, thereby modifying both the cognitive and volitional aspects of the earlier tests. And further, it provided that the ultimate burden of proof would be on the prosecution. If the jury were in any doubt whether the accused fell within this test, they should find him not guilty by reason of insanity. John Hinckley changed all this.

The present Federal law, spreading to a number of States, is to be found in the Comprehensive Crime Control Act of 1984, which accepts the thrust of recommendations made after the Hinckley Case by the American Bar Association and the American Psychiatric Association and provides:

> It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality of the wrongfulness of his acts... The defendant has the burden of proving the defense of insanity by clear and convincing evidence.

This is a dramatic change, a reversion to a simpler form of the *M'Naghten Rule*, concentrating on cognition and excluding volitional defects, and putting the burden of proof at a high standard on the accused.

One of the discussants in the Crime File program recommends an even more restrictive role for this defense than does the Comprehensive Crime Control Act of 1984. He suggests that there should be no such defense at all. This position has been advocated by a number of judges, psychiatrists, and commentators. It was the recommendation of the American Medical Association in its post-Hinckley reconsideration of this defense. It is the law in Idaho and Montana.

The various insanity defense standards that are discussed above are set out in the following chart.

Test	Legal Standard Because of Mental Illness	Final Burden of Proof	Who Bears Burden of Proof
M'Naghten	"didn't know what he was doing or didn't know it was wrong"	Varies from proof by a balance of probabilities on the defense to proof beyond a reasonable doubt on the prosecutor	
Irresistible impulse	"could not control his conduct"		
Durham	"the criminal act was caused by his mental illness"	Beyond reasonable doubt	Prosecutor
Brawner–A.L.I.	"lacks substantial capacity to appreciate the wrongfulness of his conduct or to control it"	Beyond reasonable doubt	Prosecutor
Present Federal Law	"lacks capacity to appreciate the wrongfulness of his conduct"	Clear and convincing evidence	Defense

Ideally one might illustrate these five legal insanity defense standards by giving examples of cases to which each does and does not apply. This is, however, difficult to do. Most, if not all, acts of the mentally ill fall within the *Durham* rule. Very few acts of the mentally ill fall within the other four standards if those standards are literally applied. Juries do acquit defendants on grounds of insanity, but generally because they believe it unfair to convict the mentally ill and not because the applicable insanity defense standards prescribe a particular result.

If the defense of insanity were abolished, this would *not* mean that mental illness would be irrelevant to criminal guilt. That would be most unjust. What is suggested is that the jury should have to determine only whether the accused intended the prohibited act—whether he intended to kill, intended to steal, and so on—with evidence of his illness being admissible on that question and that question only. If acquitted on evidence that his sickness prevented his forming the prohibited mental state of the crime, provision could and should be made for his hospitalization until he was cured of his illness and no longer presented a threat to himself or to others.

What Happens to Those Now Found Not Guilty by Reason of Insanity?

The details of the law concerning the hospitalization and release of persons acquitted by reason of insanity (NGRI's) vary from State to State. In most States, the broad outlines are similar. A person found NGRI will be committed to a mental hospital for assessment as to his present psychological condition and, if found to be mentally ill, as routinely happens, he will be confined until the mental health

authorities recommend to a court that he is no longer mentally ill or that he is no longer dangerous. The final release decision in all but a few States rests with the court.

Data have not been collected on whether, in practice, those found NGRI spend more time in mental hospitals than they would have spent in prisons had they been convicted—probably less is the best present guess. But since the decision of the United States Supreme Court in *Jones* in 1983, it is constitutional to hold them longer than if they had been convicted and sentenced.

One final insanity defense development warrants comment. In the wake of the Hinckley case, eight States have provided the defense of "Guilty But Mentally Ill." This is supplementary to the other defense of insanity and allows a jury to find the accused guilty but to require the prison authorities to provide for his psychiatric treatment, as necessary, during the course of his imprisonment. This adds little to the law, since, in all States, prison administrators can either assign prisoners to psychiatric divisions within their prison systems or transfer them to mental hospitals. Thus "Guilty But Mentally Ill" merely compels prison authorities to do what they were in any event empowered to do, and were doing. Prison systems deal with many more cases of mentally ill criminals than does the insanity defense. The quality of prison psychiatric services varies from very good, in the Federal system and some States, to very bad in others.

Lurking behind these arguments is a difficult problem in philosophy—the free will versus determinism debate. Medicine and psychiatry tend toward assumptions of determinism in understanding mental illness and its behavioral consequences. The law and the lawyers make assumptions of free will. This is not the occasion to try to throw light on that difficult debate, except perhaps to recall that when Isaac Bashevis Singer was asked, did he believe in free will, he is reported to have replied, "Yes. Do I have a choice?"

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Jones v. United States, 103 S.Ct. 3043 (1983).

M'Naghten's Case, 8 Eng. Rep. 718 (1843).

United States v. Brawner, 471 F. 2d 969 (D.C. Cir. 1972).

Discussion Questions

1. Should there be an insanity defense?

2. If neither lawyers nor doctors can agree why there should be an insanity defense, is it likely that jurors and the general public will have a clear understanding of its role and importance?

3. If the defense "Guilty But Mentally Ill" adds little to the law, why have eight States adopted it?

4. If there were no defense of insanity, mental illness would still play a part in determining criminal guilt. Is a separate insanity defense necessary?

5. If there were no defense of insanity, some obviously mentally disturbed defendants would be convicted of crimes and would be vulnerable to imprisonment. Do you approve or disapprove? How do you think the law should deal with people who have committed acts that would be crimes if committed by someone who is not mentally disturbed?

This study guide and the videotape, ***Insanity Defense***, is one of 22 in the CRIME FILE series. For information on how to obtain programs on other criminal justice issues in the series, contact CRIME FILE, National Institute of Justice/NCJRS, Box 6000, Rockville, MD 20850 or call 800-851-3420 (301-251-5500 from Metropolitan Washington, D.C., and Maryland).

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