CRIME FILE

Insanity Defense

A study guide written by:
Norval Morris, University of Chicago Law School

Moderator: James Q. Wilson, Professor of Government, Harvard University

Guests: D. Lowell Jensen, Deputy Attorney General, U.S. Department of Justice; Norval Morris, University of Chicago Law School; Jonas Rappeport, Chief Medical Officer, Circuit Court, Baltimore City

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, varying from 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 defense seeks to punish and to punish with whimsy 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. It is so vague that it cannot make a valid will? He is so insane that he cannot be civilly committed? He is so insane that he cannot be tried for his alleged crime? Reflection will reveal that different legal standards should apply to the same act or each of these quandaries.

For example, the defense of insanity examines the accused's responsibility for his conduct at the time of the alleged crime. It examines the accused's capacity to plead the guilty and to try him on his state of mind, not his behavior. The focus is whether the accused knew what he did, whether he has some ability to connect with his past, and whether he is legally responsible for his alleged criminal conduct. Although some psychiatrist testimony may afford to quotations 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 treat particular diseases and their treatments, often classifying the more serious diseases in psychoses and personality disorders.

There is little agreement among legal commentators on the purposes to be served by the insanity defense or on the tests 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 psychiatrist William Buckland's in the Dinsmore Case: "Our collective conscience does not allow punishment where it cannot impose blame. In practice, it may be hard to prove that the accused was insane, but it is equally hard to prove that he did 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 positive-correctional disposition is appropriate and those in which a medical-societal disposition is the only kind that the law should allow."

You have seen that neither lawyer nor doctor offers much help in answering the question of why there should be a defense of insanity—and if you have, you are asked to give it a try.

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

How Frequently Was the Defense of Insanity Successfully Pleaded?

Compared with a total prison population in 1964 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, relatively rare and generally limited to those cases 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—erroneously 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 the charge. One reason for this is that a process has been developed which, if followed faithfully, will result in conviction for the defendant if found guilty by reason of insanity may be held in a mental hospital longer than if the trial and sentenced for the maximum possible lawful term. This provides, a strong disincentive to be charged with a mental illness.

In extreme cases, particularly when capital punishment may be a possibility, the defense of insanity is used. 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 some 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 language was taken from English law and in particular from an English case, that of M'Naghten in 1843. To establish a defense on the ground of insanity, it must be clearly proved that at the time of the committing of the act, the accused was laboring under such a defect of reason from disease of the mind, that he did not know what he was doing; or, if he did know what he was doing, that he did not know what he was doing wrong.

This test became known as the "right-wrong" test and is still the basis of the Federal system and qualifications have been added over the years. In 1983, 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 not be found guilty by reason of insanity if he had a mental disease which prevented him from controlling his conduct. This was an obvious logic: express but difficult to apply. The crime of Flight, for example, the moderator and then the other discussions refer to this as the "original" test or the "right-wrong" test of the defense of insanity, as distinct from the "cognitive" (the ability to know enough in the M'Naghten Rule).

Since 1843 to 1972 the Federal system experimented with the Dinsmore Rule—a quite different test of insanity. This test was adopted by the Federal courts on April 23, 1972 and had restrictions on the concept of criminal and excluding volitional acts, and putting the burden of proof in the accused.

One of the drawbacks in the Crime File program examines an even more restrictive role for this defense than does the Federal Crime Control Act. He suggests that there should be no such defense at all. This position is supported by a number of judges, psychiatrists, and commentators. It was the recommendation of the President's Commission on the Insanity Evaluation of this defense. It is the law in Idaho and Montana.

In 1972 the Federal system rejected the M'Naghten Rule and adopted the substantive of a defense of insanity recommended in the Model Penal Code. The latter term remains in effect in half the States. However, in the wake of the decision he had been tried and found not guilty by reason of insanity in hundreds of cases throughout the country and the Model Penal Code test is increasingly subjected to legislative restriction. The Federal system of law under which John Hinckley was tried was United States v. Brumitex. However, some of the language of the Hinckley Court, rejecting the Dinsmore Rule and adopting a version of the Model Penal Code's test:

1. A principal reason for the decision to depart from the Dinsmore Rule is the unsatisfactory characteristics of the defense, by expert testimony in the expert's competence in that there is no generally accepted understanding in the law or the community, it represents, of the concept requiring that the accused be legally insane.

The form of this test that was adopted in Brumitex, and under which John Hinckley was 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 distinguished Federal and State practice until the Hinckley Case and is still the rule for about half the States. As you see, it speaks of a substantial incapacity to know and substantial incapacity to control, thereby modifying both the conflicting practices of the acts which are included in 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 guilty not guilty, regardless of the advice of the Hinckley personal defense.

The present Federal law, spreading to many States, has been in the Comprehensive Crime Control Act of 1973, which removes the requirements made after the Hinckley Case by the American Bar Association and the American Psychological Association.

It is an affirmative defense to prosecution under any Federal statute that, at the time of the committing of the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the wrongfulness of his acts.

It has been found that there is a substantial defense of insanity where it is clear and convincing evidence that the defendant is not guilty of the offense.

The various insanity defense standards that are discussed above are set out in the following chart.
authenticies 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 to have been collected on whether, in practice, these found NGRI spend more time in mental hospitals than they would have spent in prisons but that they have been convicted—probably just as 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 developments a non-answer common. In the wake of the Hinckley case, eight States have grossed the defense of "Guilt But Mentally Ill." This is in supplement to the other defense of insanity and allows a jury to find the accused guilty, but to require the private authorities to provide forensic psychiatric treatment, as necessary, during the course of his imprisonment. This adds little to the law, since, in all States, prison authorities can order other to get psychiatric treatment if they see fit for their patients. prison systems, or transfer their inmates to mental hospitals. Thus, "Guilt But Mentally Ill" merely amends prison authorities' tools but they are still not a pan-empathized tools, and working.

Prison systems dealt with many more cases of mentally ill criminals than does the insanity defense. The quality of prison psychiatric services varies from very good, at the Federal system and some States, to very bad in others.

Looking behind these arguments is a difficult problem in philosophy—the free will versus determinism debate. Morality and psychiatry stand toward assumptions of determinism in understanding mental illness and its behavioral consequences. The law and the laws may make assumptions of free will. This is not the occasion to try, to throw light on this difficult debate, escape perhaps to recall this is what they asked in 1849, when was 28, did he believe in free will, he is reported to have replied, "Yes. Do I have a choice?"

Cases and Statutes


Discussion Questions

1. Should there be an insanity defense?

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

3. If the defense "Guilt 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 moral 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?

References


This study guide and the video tape, Insanity Defense, was 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 800-851–4240 (301–251–5500 from Metropolitan Washington, D.C., and Maryland).