The Death-Qualified Jury and the Defense of Insanity

Phoebe C. Ellsworth,* Raymond M. Bukaty,† Claudia L. Cowan,‡ and William C. Thompson§

We predicted that people who are excluded from serving on juries in capital cases due to their opposition to the death penalty (excludable subjects) tend to place a greater value on the preservation of due process guarantees than on efficient crime control, and therefore are more likely to accept an insanity defense in criminal cases than are people who are permitted to serve on capital juries (death-qualified subjects). Subjects who had previously been classified as death-qualified or excludable read four summaries of cases in which the defendant entered a plea of insanity, and made judgments of guilt or innocence. In the two cases involving nonorganic disorders (schizophrenia), death-qualified subjects were significantly more likely than excludable subjects to vote guilty; in the two cases involving organic disorders (mental retardation and psychomotor epilepsy), there were no differences between the two groups. In addition, excludable subjects gave significantly higher estimates than death-qualified subjects of the proportion of defendants pleading insanity who “really are” insane.

INTRODUCTION

The number of criminal defendants who plead “not guilty by reason of insanity” is relatively small (Stone, 1975), but the amount of discussion and controversy generated by the insanity defense has been enormous. The idea that a person who has committed an atrocious crime can be acquitted on the grounds of insanity is disturbing to many people, and has been so at least since the time when the basic right-from-wrong standard for determining legal insanity was laid down by the British Common Law Courts following the M’Naghten case1 in 1843. In fact, the formulation of the M’Naghten right/wrong standard was a direct response to

*Department of Psychology, Stanford University, Stanford, California 94305.
†Kadison, Psgelzer, Woodward, Quinn and Rossi, 702 Wilshire Boulevard, Los Angeles, California 90017.
‡Attorney at Law, 2002 South Circle View Drive, Suite D, Irvine, California 92715.
§Program in Social Ecology, University of California-Irvine, Irvine, California 92717.
1M’Naghten’s Case, 10 Clark & Finnelly’s Reports 200 (1843).
the widespread public indignation aroused by M’Naghten’s acquittal and commitment to Broadmoor.

Public skepticism about the insanity defense does not seem to have diminished greatly since the mid-nineteenth century. In three opinion surveys conducted during the 1970s (Bronson, 1970; Harris, 1971; Fitzgerald and Ellsworth, this issue) a substantial majority of each of the populations sampled agreed that the plea of insanity is a “loophole” that allows too many guilty people to go free. Indeed, the American public’s excited condemnation of John Hinckley’s acquittal in 1982, their clamor for a more restrictive insanity defense, and many lawmakers’ hasty compliance with the demands of the moment are indistinguishable from the aftermath of the M’Naghten case. Despite the enormous advances in scientific knowledge about psychopathology since M’Naghten’s times, the general public seem no more willing to show mercy or understanding for those afflicted with mental disorders, at least not for those who break the law. In fact the reforms that have been proposed in the wake of the Hinckley case have generally attempted to limit the M’Naghten rule still further. Why do people react so negatively and care so strongly about the handful of wrongdoers who plead insanity?

As part of a much larger study of jurors’ reactions to the insanity defense, Simon (1967) attempted to discover whether there were other attitudes that might predict how favorably jurors would react to a defendant entering a plea of insanity. Simon had her jurors listen to a tape recording of an incest trial in which the defendant pleaded not guilty by reason of insanity, and used their predeliberation verdicts as her criterion of favorability. Of the 816 jurors, 67% voted guilty and 33% not guilty by reason of insanity. Before they heard the case, Simon gave her jurors questionnaires designed to measure sympathy for the mentally ill, sexual permissiveness, and “knowledge and attitudes about psychiatric interpretations of motivations and behavior” (1967, p. 126). She found no relation between any of these attitudinal measures and the jurors’ verdicts.

Weak and inconsistent relationships between the individual characteristics of jurors and jury verdicts are common in the research literature, leading some social psychologists to conclude that “jurors are much more responsive to the evidence placed before them than to their own personalities and attitudes” (Saks and Hastie, 1978, p 70; see also Davis, Bray, and Holt, 1977; and Penrod, Note 1).

And yet this conclusion is unsatisfying. The evidence is undoubtedly a powerful force, but it is rarely powerful enough to assure unanimity on first ballot verdicts, either in real or simulated trials (Kalven and Zeisel, 1966; Hastie, Penrod, and Pennington, in press). In most trials different jurors interpret the same evidence in different ways; since the stimulus situation is constant, the variability in interpretation must be due to individual differences. And these differences are consequential. One of the most consistent findings in research on jury decision making is that the first ballot split is an excellent predictor of the final outcome. While the size of the initial majority is certainly due in part to the strength of the evidence, it is not entirely so. Different juries hearing the same trial begin with different splits, and end with different verdicts (Davis, Bray, and Holt, 1977; Hastie, Penrod, and Pennington, in press).