On Finding for Defendants Who Plead Insanity: The Crucial Impact of Dispositional Instructions and Opportunity to Deliberate

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One hundred twenty participants functioned as mock-jurors and as members of deliberating juries in an experiment designed to assess the impact of dispositional instruction on verdicts rendered in an insanity trial. Consistent with prior research (K. E. Whittemore & J. R. Ogloff, 1995), dispositional instruction had no effect on the verdict preferences of individual jurors prior to deliberating. Yet, as expected, the instruction manipulation had a major impact on postdeliberative decisions (i.e., group verdicts; individual juror verdict preferences). Content analyses of jury deliberations revealed that postdeliberative shifts toward harsh verdicts in uninstructed juries and toward lenient verdicts in instructed juries were mediated by the impact of the Instruction manipulation on the content of jury deliberations: uninstructed juries feared that an acquitted-insane defendant would be freed to act again, whereas instructed juries recognized that finding for an insane defendant implied his retention and treatment. Implications of these results for both legal policy and the conduct of mock-trial research are discussed.

INTRODUCTION

Among the more controversial pleas a criminal defendant might enter is “not guilty by reason of insanity.” The rationale underlying the insanity defense is that a person who is legally insane lacks the capacity for free choice that must be established in order to prove criminal intent. Yet, public reactions to such high-profile insanity acquittals as the Hinckley trial (United States v. Hinckley, 1981) have been decidedly negative, and subsequent research points to several common misperceptions people have about the insanity defense that appear to underlie these reactions (Melton, Petrila, Poythress, & Slobogin, 1987). First, the public at large believes that

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insanity defenses are quite common and that a majority of defendants who so plead are subsequently acquitted. Yet, less than 1% of criminal jury trials in one eight-state survey involved insanity pleas, and approximately 26% of those cases ended in an NGRI verdict (Silver, Cirincione & Steadman, 1994).4

Of course, acquittal rates stemming from insanity pleas may be much lower than 26% because many such cases are settled by plea bargaining without ever going to trial.5 Even if a defendant has a legally compelling reason for pleading insanity, many defense counselors may seek a plea, believing that a criminal jury may be extremely reluctant to acquit the accused of wrongdoing on the basis of mental impairment. Indeed, jurists, like the public at large, are often misinformed about the disposition of defendants found legally insane, thinking that these mentally impaired and potentially dangerous individuals are released back into society, just as any other acquitted individual would be (Melton et al., 1987). Rarely, if ever, does this happen. Typically, acquitted insane defendants are committed and remain under treatment until they petition the court for a sanity hearing and are able to convince the proper authorities that they are no longer a danger to themselves or society or both. This may be a long and arduous process. One study conducted in New York (Steadman & Braff, 1983) found that the average hospital stay for defendants found not guilty by reason of insanity was 3 years, with those committing the more serious acts being retained for longer periods. In addition to being misinformed about the disposition of an acquitted-insane defendant, juries may be reluctant to vote not guilty by reason of insanity because of the general public belief that defendants found insane are especially dangerous and prone to recidivism. However, the empirical record suggests that legally insane defendants show slightly lower rates of recidivism than do other defendants convicted of similar offenses (Cohen, Spodak, Silver, & Williams, 1988; Melton et al., 1987).

**POTENTIAL IMPACT OF DISPOSITIONAL INSTRUCTION**

Clearly, it seems somewhat less than just were a person who met the legally defined standards of insanity to be convicted for his/her misdeeds because the jury hearing the case was unaware of the treatment he/she would receive, thinking instead that an insanity acquittal would have the effect of releasing a dangerous person back to society to possibly commit other harmful acts. Yet, the low success rate for not guilty by reason of insanity pleas implies that such fears may play upon many juries, causing them to err on the side of caution by convicting the accused, even when they suspect that a reasonable basis exists for judging the defendant insane. If this is actually the case, then juries given dispositional instructions informing them that acquitted-insane defendants will be committed for treatment and not released until judged sane and of no further threat to society should (1) have their fears quelled and (2) be more inclined to find for the defendants whom they actually suspect to be legally insane.

4It should be noted that the NGRI success rate varied among the eight states in this study anywhere from 7–87%.

5We thank an anonymous reviewer for making this point.