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Demythologizing Inaccurate Perceptions of the Insanity Defense*

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Public opinion data show that the most prevalent concern expressed regarding the insanity defense is that it is a loophole through which would-be criminals escape punishment for illegal acts. This article examines the extent to which the public's perceptions of the insanity defense are consistent with newly collected empirical data. Specifically, it compares perceptions of the use, success, and outcomes associated with the insanity defense to data derived from a large-scale study of insanity pleas in eight states. The analysis reveals that the public overestimates the use and success of an insanity defense and underestimates the extent to which insanity acquittees are confined upon acquittal. The role of selective media reporting in the formation of public perceptions is discussed.

Even though the insanity defense as a legal doctrine has existed for centuries, it is only during the last several decades that researchers have begun to develop empirical knowledge about the actual operation of the defense, its level of use, and what happens to persons who are acquitted by reason of insanity (Appelbaum, 1982). Although much of the research has been limited to studies of single jurisdictions, consistencies have emerged concerning the level of use and rate of success of the insanity defense (Steadman, 1985). However, because almost every study is of a single jurisdiction, very limited consistency has been achieved in establishing an understanding of what happens to persons once they are acquitted by reason of insanity. Additionally, few studies have relied on samples of insanity

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pleas, as opposed to insanity acquittals, owing primarily to the difficulty of obtaining such data (Callahan, Steadman, McGreevy, & Robbins, 1991).

By contrast, there have been a number of studies examining the nature of the public's perceptions and attitudes concerning the insanity defense. For the most part, these studies have been driven by a desire to understand the negative public outcry that typically attaches to such highly publicized insanity defense trials as those of John Hinckley Jr. and, more recently, Jeffrey Dahmer. Public opinion data have shown that the public's most prevalent concern regarding the insanity defense is that it is a loophole through which would-be criminals escape punishment for illegal acts (Hans, 1986).

Research on the public's perceptions of the insanity defense has consistently yielded strong public opposition. In a telephone survey conducted by Hans (1986), 91% of respondents agreed that "judges and juries have a hard time telling whether the defendants are really sane or insane." Eighty-nine percent agreed that "the insanity plea is a loophole that allows too many guilty people to go free." Eighty-nine percent agreed that "the insanity defense allows dangerous people out on the streets." Also, only 25% of respondents felt "confident that people found NGRI are only released when it's safe to do so" (p. 402). Similarly, Pasewark and Seidenzahl (1979) reported 90% agreement with the following statements: "The insanity plea is used too much. Too many people escape responsibilities for crimes by pleading insanity" (p. 202).

Taken together, these studies indicate that the public is deeply skeptical of the insanity defense. However, it is important to note that although the public typically reports negative attitudes toward the insanity defense, it is not true that most favor its abolition. The public has deep-seated ambivalence concerning abolition of the insanity defense. While 66% of respondents reported agreement with the notion that the insanity defense should not be allowed as a complete defense (Roberts, Golding, & Finchman, 1987), about 50% expressed the opinion that the defense should be abolished (Hans, 1986). Further, most respondents reported agreement with the notion that the insanity defense is at least sometimes justified and that it is a necessary part of the legal system (Roberts & Golding, 1991).

A number of studies have focused on the role of selective media reporting in the formation of public perceptions and attitudes toward the "criminally insane," of which persons acquitted by reason of insanity are a subgroup. A content analysis of all prime-time American television dramas found that 17% of them depicted a mentally ill character, and that 73% of these mentally ill characters were portrayed as violent, compared with 40% of the "normal" characters (Gerbner, Gross, Morgan, & Signorielli, 1978). Similarly, twice as many homicides were attributed to the mentally ill characters as to the normal characters (23% vs. 10%, respectively). Another content analysis of stories from the United Press International database found that in 86% of all print stories dealing with former mental patients, a violent crime was the focus of the article.

When Steadman and Cocozza (1978) asked respondents from the general public to identify by name a criminally insane person whom they had heard or read about, the person most frequently named was Robert Garrow (21%), a local (New

York) figure who had recently been convicted of a murder after a highly publicized trial. The second most frequently named person was Charles Manson. These and most of the other figures named in the study had been involved in or accused of murder. None of the persons cited had been found NGRI. Steadman and Cocozza (1978) conclude: "Rather than have an accurate picture of who ends up in institutions for the criminally insane—for instance, recidivists, robbers, and burglars from marginal backgrounds—the public and press generalize the cloak of mental illness to persons involved in somewhat bizarre criminal activities" (p. 459).

Given the power of the media to shape public perceptions—especially of groups with which the public has little direct contact—it is no surprise that the public's image of the typical insanity defendant is negative and skewed in the direction of bizarre murderers. However, even among people for whom personal contact is not an issue, a distorted image of insanity defendants can be found. Of the 80% of legal professionals (including lawyers and judges) who felt that the insanity defense was used consistently for specific offenses, murder was the most frequently cited offense (Burton & Steadman, 1978).

Almost every study of the public's perceptions of the insanity defense reports consistent support for the notion that the insanity defense is considered a loophole. The term *loophole,* in this context, reflects the public's perception that persons acquitted by reason of insanity are not dealt with as severely, in terms of length of confinement and level of security of placement, as persons found guilty of the same crimes. As recently as February of 1992, a *Time* magazine article concerning the raising of the insanity plea by Jeffrey Dahmer stated that "if convicted, Dahmer will be sentenced to life imprisonment. However, if he is found NGRI, he will be sent to a mental hospital where he will be eligible for release in 1 year" (p. 17). The image of the insanity acquittee who "gets off scot free" is undoubtedly the most frequent image associated with the insanity defense put forth by the media.

Studies of the confinement patterns associated with the insanity defense have yielded inconsistent results. Some studies have found that insanity acquittees stay longer in custody than persons found guilty of similar crimes (Harris, Rice, & Cormier, 1991), whereas others have found no difference in the confinement patterns (Braff, Arvinites, & Steadman, 1983; Kahn & Raifman, 1981). Still others have found shorter confinements for insanity acquittees than for convicted inmates (Pasewark, Pantle, & Steadman, 1982). These discrepancies are likely due to variations in the systems for managing insanity acquittees and convicted inmates among the jurisdictions studied, as well as variation derived from the limited sample sizes employed.

A major limitation of all research trying to assess the accuracy of the public's perceptions of the insanity defense with regard to confinement patterns is that few studies have been done with samples of defendants pleading insanity. Instead, persons already acquitted by reason of insanity and admitted to state mental hospitals are described and their subsequent detention patterns are compared to felons convicted of similar charges and incarcerated in state prisons. Such comparisons are likely to be biased because not all insanity acquittees are committed

to state mental hospitals and because a substantial proportion of all those defendants who actually use the insanity plea are missed when samples are based on acquittees only.

Drawing on data from the largest multijurisdictional study of insanity pleas ever conducted in the U.S., the present study attempts to evaluate the accuracy of the public's perceptions concerning the use, success, and outcomes associated with the insanity plea using a sample of defendants pleading insanity across eight states around the time of the 1982 insanity acquittal of John Hinckley.

METHOD

This study is part of a large-scale, longitudinal study of insanity defense reform in eight states (California, Georgia, Montana, New Jersey, New York, Ohio, Washington, and Wisconsin) conducted by Steadman and colleagues (Steadman et al., 1993).

Because no statewide data existed on the frequency of insanity pleas in any of the eight states, counties within each state were sampled based on their number of insanity acquittals. Sufficient numbers of counties were targeted to obtain about two thirds of all the insanity acquittals in each state. This goal was achieved in all but one state, Georgia, where counties producing 60% of the acquittals were obtained. Overall, nearly one million felony indictments (n = 976,209) from 49 counties in eight states were examined to obtain data on all criminal defendants who entered an insanity plea at any time during their defense between 1976 and 1985 (n = 8,953).

Among the data elements collected were demographic characteristics of the defendant, arrest charge, victim characteristics, verdict and sentence received, and disposition (i.e., prison, jail, hospital, or community). In order to obtain confinement data for each subject, defendants found NGRI were followed through the state mental health departments, and those found guilty were followed through the departments of corrections. Table 1 presents a profile of the eight study states. Since the purpose of this study was to assess the accuracy of public perceptions concerning the insanity defense, data from the eight states were pooled in all of the following analyses.

RESULTS

We first focused on the accuracy of the public's perception that defendants using insanity pleas are largely alleged murderers. Criminal charges of persons pleading insanity were grouped into three categories: *Murder,* including murder and manslaughter; *Other violent offenses,* including rape, physical assault, attempted murder, attempted rape, kidnapping, arson, robbery, and sexual abuse; and *Nonviolent offenses* including all property and minor crimes. Upon examining the distribution of criminal offenses for insanity pleas, we found that 14.3% of

Table 1. Profile of Study States

	Number of study counties	Felony indictments	Insanity pleas	NGRI acquittals	Plea[a] rate	Success[b] rate
California	7	225,152	1,300	665	.58	45.52
Georgia	12	151,669	2,630	426	1.73	13.11
Montana	7	14,227	816	58	5.74	7.31
New Jersey	6	125,951	670	295	.53	43.34
New York	5	195,051	556	226	.29	39.78
Ohio	5	147,477	2,005	342	1.36	15.30
Washington	3	74,105	442	387	.60	87.36
Wisconsin	4	33,613	535	156	1.59	28.24
Total	49	967,209	8,953	2,555	.93	26.27

[a] Plea rate is the number of insanity pleas per 100 felony indictments.
[b] Success rate is the number of insanity acquittals per 100 insanity pleas. It is based only on data obtained through county level records (not used in table), and does not include acquittees identified through state levels.

defendants pleading insanity had been charged with murder, the largest proportion of insanity defendants had been charged with other violent offenses (54.1%), and 31.6% had been charged with nonviolent offenses.

Part A of Table 2 shows a comparison of the public's estimate of the level of use the insanity defense receives, as reported by Pasewark and Seidenzahl (1979), and its actual level of use across the eight states we studied. As shown, the public's estimate of the insanity plea rate (defined as the number of insanity pleas per 100 felony indictments) far exceeds the actual plea rate. The public's estimate of 37% is 41 times greater than the actual plea rate of 0.9%. Similarly, the public's estimate of the success rate (defined as the number of acquittals per 100 insanity pleas) is 44%, compared to the actual success rate of 26%. This means that for every 1,000 felony cases, the public would estimate 370 insanity pleas of which 44% (163) would be estimated as successful. In fact, there are nine insanity pleas

Table 2. Comparison of Public Perceptions with the Actual Operation of the Insanity Defense

	Public	Actual
A. Use of the insanity defense		
Percentage of felony indictments resulting in an insanity plea.	37%	0.9%
Percentage of insanity pleas resulting in acquittal.	44%	26%
B. Disposition of insanity acquittees		
Percentage of insanity acquittees sent to a mental hospital.	50.6%	84.7%
Percentage of insanity acquittees set free.	25.6%	15.3%
Conditional Release		11.6%
Outpatient		2.6%
Release		1.1%
C. Length of confinement of insanity acquittees (in months)		
All crimes	21.8	32.5
Murder		76.4

for every 1,000 felony cases of which 26% (about 2) are successful. The public's estimate of the number of insanity acquittals is 81 times the actual number.

Part B of Table 2 compares what the public believes happens to persons acquitted by reason of insanity, as reported by Hans (1986), to what actually occurs. As shown, the public underestimates the proportion of insanity acquittees sent to a mental hospital by about 35 percentage points (50.6% estimated vs. 84.7% actually hospitalized). In addition, the public overestimates the percentage of insanity acquittees that go free upon acquittal (25.6% vs. 15.3%, respectively). It is important to note that the degree of overestimation depends on how we define "go free." If conditional release and outpatient treatment are excluded from the definition on the grounds that under these scenarios the patient remains under the control of the mental hospital, then we find the public's estimate of the proportion of acquittees released upon acquittal to be about 20 times greater than the actual proportion (25.6% vs. 1.1%, respectively). In either case, the proportion of insanity acquittees set free upon acquittal is considerably overestimated by the public.

The next question we addressed concerns the length of confinement of insanity acquittees who were sent to a mental hospital. Part C of Table 2 shows that the public's estimate of the average length of confinement, as reported by Hans (1986), was 21.8 months (almost 2 years), compared with a median length of confinement of 32.5 months for all persons in our sample regardless of crime. However, if we take into account that the public's estimate of length of confinement was based on their inaccurate perception that almost all NGRI cases were murder defendants, the more accurate comparison is with insanity acquittees charged with murder. Part C of Table 2 shows that the actual median length of confinement for persons charged with murder was 76.4 months, three and a half times greater than the public's estimate.

These analyses demonstrate a clear pattern in the public's perception of the operation of the insanity defense. First, the public overestimates the proportion of insanity pleas that involve a murder charge. Second, the public overestimates the rate at which the insanity plea is raised in felony proceedings and overestimates the rate at which persons who raise the insanity plea are acquitted. In addition, the public overestimates the extent to which insanity acquittees are released upon acquittal and underestimates the extent to which they are hospitalized as well as the length of confinement of insanity acquittees who are sent to mental hospitals.

DISCUSSION

Consistent with prior research, this study found that the public's perceptions of the insanity defense are badly distorted. It is no surprise that the public overestimates the level of use and success of the insanity defense, given the magnitude of selective reporting by the media. When 86% of all print stories dealing with former mental patients involve a violent crime, the public's perception of the frequency of such incidents is bound to be influenced. Such distorted perceptions

feed the public's fear, which in turn is reflected in negativity toward the insanity defense. Similarly, when media reports concerning the consequences of an acquittal by reason of insanity imply advantages for insanity acquittees in gaining release, the public's perceptions are bound to be influenced. Yet, the data show that insanity acquittees are rarely either directly released upon acquittal or soon thereafter.

Furthermore, there appear to be considerable costs associated with raising an insanity plea. A previous comparison of the lengths of confinement of unsuccessful insanity pleas with convicted felons who never raised an insanity plea found a 22% increase in detention time (775 days to 949 days) for unsuccessful insanity defendants over the convicted felons who never raised the plea (Braff, Arvinites, & Steadman, 1983). Those researchers also reported that whereas 11% of all felony arrests result in imprisonment, 67% of the unsuccessful insanity pleas were imprisoned. This leads us to speculate that not only are lengths of confinement of insanity acquittees longer than the public estimates, but so are the confinements of unsuccessful insanity pleas. Taken together, these data cast serious doubts upon the notion that the insanity defense is a loophole through which would-be criminals are returned to the community.

Though it is our belief that selective media reporting is largely responsible for inaccurate perceptions of the insanity defense, recent positive changes in the extent to which media reports accurately depict the insanity defense have emerged. During its recent coverage of the Jeffrey Dahmer trial in Milwaukee, we were frequently contacted by the press as word of our eight-state database spread. In one of its stories about Dahmer (February 3, 1992), *Newsweek,* after one of its writers contacted us, acknowledged that, "public perceptions to the contrary, the insanity plea is relatively rare; lawyers consider it the defense of last resort," and, "few felons actually 'get off' thanks to the insanity defense" (p. 49). It is, of course, impossible to know to what extent these and other stories that incorporated accurate information about the defense influenced public perceptions. More research on the public's perceptions of the insanity defense would need to be done.

For instance, one issue that we were unable to address with our data was whether corrected information would in fact lead to a fundamental change in the public's stance. It is quite possible that even if the public possessed accurate information concerning the limited use and success of the insanity defense, their assessment of the seriousness of harm that might be caused by insanity acquittees may remain so high that the public would be unwilling to change its position. In other words, it is quite possible that negative public attitudes toward the insanity defense are founded upon prejudicial, heuristic, or "sanist" devices for categorizing the criminally insane (Perlin, 1993), regardless of the availability of empirical information.

Regardless, our data were able to influence how the insanity defense was depicted for millions of people. Considering that public sentiment is often the impetus for legal change (Page & Shapiro, 1983), until we influence inaccurate public perceptions of the insanity defense, we must caution against an unquestioning acceptance of public opinion in the formation of laws and legal reform.

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