The effect of the Guilty but Mentally Ill verdict on the outcome of a jury trial

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Abstract

This paper will discuss the history and evolution of the insanity defense. The definitions for each of the insanity tests will be reviewed as well their respective drawbacks. Then this paper will explore the implications of giving a jury the option of the Guilty but Mentally Ill verdict, and its pros and cons. Then this paper will look at whether the option of Guilty but mentally Ill can affect the verdict of a jury trial. This paper will then end with the current state of the insanity defense and conclusions of this research.

History of the Insanity Defense

Pre-McNaughton

Today, the insanity defense is an affirmative defense, this means the defendant must raise the argument that they are insane, and if they were found insane, it would negate the elements of a crime. The burden of proof is also on the defendant and the defendant must prove the defense of insanity by "clear and convincing evidence"[1] (Garner, 2001).

The insanity defense has evolved over centuries. People have always believed that it is immoral to punish a person who is not responsible for their criminal behavior, because if a person does not know what they are doing at the time of a crime they should not have to be punished for it. The Roman Empire that found people *non-compos mentis* (Latin. without mastery of mind) where not held responsible for their criminal actions. The Roman concept of "mastery of mind" has evolved into the modern concept of *mens rea* or "guilty mind" which is the component of a crime that looks at a person's state of mind (Borum & Fulero, 1999; Costanzo, 2004).

[1] 18 U.S.C. Section 17.

Before the McNaughton ruling the insanity defense went through three important phases. Before the McNaughton Rule, the insanity defense was applied through three tests: the “good and evil” test, the “wild beast” test, and then the “right and wrong test”. The “good and evil” test first appeared in English cases around the year 1313. The "good and evil" test found its origins in biblical and religiously concepts. The insane where thought of as children incapable of “sinning” because they could not choose or distinguish the “good from the evil.” Under this rule, a defendant would be found guilty if they knew the difference between good and evil at the time of the crime. The “good and evil” test was used from the fourteenth century up to the sixteenth century when it was replaced in 1724 by the “wild best test” (Blunt & Stock, 1985; Gerald, 1997; Perlin, 1994).

The “wild best test” transformed insanity law and first found use in the 1724 case of *Rex v. Arnold*. This case involved a defendant who shot and attempted to kill a British load. The trial judge (Judge Tracy) instructed the jurors to acquit the defendant by reason of insanity if it was found that he was “a man totally deprived of his understanding and memory, and doth not know what he is doing, no more than a *brute*, or *a wild beast,* such a one is never the object of punishment.” However, the “wild best test” is a misnomer this is a result of the mistranslation of two Latin phrases. The Latin phrase *Brutis* was simply translated to mean a “brute” and the phrase “wild beast” which in 1724 England really referred to farm animals like foxes, deer, and rabbits. Therefore, the phrase wild beast did not literally mean a person who was like a wild beast but rather that the person had the *intellectual ability* of a farm animal. Judge Tracy’s jury instruction change the insanity defense from that of a moral failing (i.e. good versus evil) to a cognitive failing,

or in other words a mental defect involving "understand and memory" (Maeder, 1985; Perlin, 1994).

A century later, in 1840 the insanity standard was further refined by the case of *Regina v. Oxford*. This test was the precursor for the McNaughton rule. Lord Denman told the jury that they must acquit the defendant by reason of insanity if it was found that the he suffered "from the effect of a disease mind", and if he was "quite unaware of the nature, character, and consequences of the act he was committing" (Costanzo, 2004; Perlin, 1994).

The McNaughton Rule

The insanity defense modern roots come from the 1843 case involving Daniel McNaughton (sometimes spelled "M'Naghten"), who was a woodcutter from Scotland. McNaughton suffered from what we today classify as paranoia and delusions of persecution. He thought the government was trying to kill him, and that the then Prime Minister of England Robert Peel was persecuting him. McNaughton travel to London with the intention of assassinating Peel. He could have been successful if it was not for the fact that Peel had decided to ride with Queen Victoria in her carriage. McNaughton ended up killing the Prime Minister's Secretary, Edward Drummond who was riding in Peel's carriage (Costanzo, 2004; Schmalleger, 2002; Slobogin, 2003).

Most of the Early English common law tests emphasized the defendant's ability "to discern the difference between moral good and evil" and the defendant's knowledge of the nature of their act (i.e. right from wrong) the McNaughton case ended up combing both views. At the trial, the defense counsel claimed the McNaughton was insane relying on the then new work of Dr. Isaac Ray, and his book called *The Medical Jurisprudence of*

Insanity. During the lengthy trial, nine medical experts testified that McNaughton was indeed insane, and the jury ended up finding him not guilty by reason of insanity (NGRI). The psychiatric experts remained firm in their diagnosis even though they where told that if McNaughton was found NGRI he would be sent to a psychiatric hospital instead of prison. This set the help set the precedent of medical treatment for the criminally insane. McNaughton ended up living his remaining years of his life in the Broadmoor insane asylum. The *McNaughton* verdict incensed Queen Victoria and caused great public outcry. Queen Victoria commanded the House of Lords to pass new laws that would protect the public from "the wrath of madmen who could now kill with impunity." The high court came up with the *McNaughton* Rule, which has three parts. The first is the presumption that the defendant is sane and that they are responsible for their criminal acts. The next requirement of the McNaughton Rule is that at the time of the crime the defendant must have been suffering "under a defect of reason" or "from disease of the mind." The third requirement of this rule is that the defendant must "not know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong". Over time, the *McNaughton* rule became part of English law and then eventually introduced into the American legal system. The McNaughton rule is sometimes called the "cognitive test" rule, because it relies on the knowing and understanding of the defendant that the act was either right or wrong (Costanzo, 2004; Gerald, 1997; Schmalleger, 2002; Slobogin, 2003).

Many critics cite the *McNaughton* Rule as too vague because there are two ways to form an acceptable defense. The first possible defense is that of a lack of *mens rea*, which stems from the fact that the person would not know that their actions where wrong.

The second possible defense is created from the "wrongfulness test" aspect of this rule, which has been a center of controversy since *McNaughton* was implemented. Most insanity statues including the Model Penal Code, the American Psychiatric Association's model standard on legal insanity, the 1984 Insanity Defense Reform Act (IDRA), and most state penal codes all have some reference to the word "wrong" or "wrongfulness." This has been done in an attempt to take into account the defendant's state of mind at the time of the crime. Critics have noted that the term "wrong" is so subjective that there is substantial disagreement to whether this means the legal or moral wrongfulness of the act. To be legally wrong the defendant only has to know that the act they committed was against the law. A person with a mental disease or defect would not be considered aware of this distinction from the legal point of view and would then be considered insane by this standard. To be considered sane from a moral prospective a person would not only have to know that the act was legally wrong but would also have to believe that their act was morally unacceptable. In addition to the confusion between the distinctions of legally and morally wrong the conduct can also be viewed from the psychiatric viewpoint. From this viewpoint, the wrongfulness component would involve more than a legal or moral aspect, but could also be viewed as involving cognitive, personality, and intellectual components. Some jurisdictions solve these problems by simply asking if the defendant knew that the action was wrong or by telling the jury that the defendant must have had the capacity to understand the nature of the act. Other jurisdictions go one-step further and just leave it up to the jury to decide what the terms of the McNaughton Rule mean (Costanzo, 2004; Ferdico,2002; Schmalleger, 2002; Slobogin, 2003).

The Irresistible Impulse Test

Many professionals criticize the wrongfulness component of the *McNaughton* Rule saying that cognition is only one part of insanity, and that it may not even by the most important part. The *McNaughton* rule makes no provision for the degrees of insanity. Under the *McNaughton* rule the person either knows what they are doing, and/or knows that the act is wrong to be found sane. In the 1920's many states in an attempt to solve these problems modified their McNaughton rules to allow for "irresistible impulse" defenses. At the time, it was widely believed that some forms of behavior where beyond the controlled of certain individuals. Using the Irresistible impulse defense the defendant would claim that because of a mental disease or defect they where unable to control their behavior at the time of the criminal act. Under this test, the person would be found not guilty by reason of insanity if "his reasoning powers were so far dethroned by his diseased mental condition as to deprive him of willpower to resist the insane impulse to perpetrate the deed, though knowing it to be wrong"[2]. To make this concept easier for jurors to understand some jurisdictions use introduced the "policeman at the elbow" test. The jurors are told that "if the accused would not have committed that act had there been a policeman present, he cannot be said to have acted under irresistible impulse" (Becker, 2003; Costanzo, 2004; Schmalleger, 2002).

The irresistible impulse definition of insanity did not last long, because it was too hard to tell when an impulse was irresistible and when it was not due too the subjectivity of each individual juror. Other critics have pointed out that it is impossible to know if a person cannot control their behavior in specific situations and that the uncontrollable impulse test can be used as an excuse by anybody who has committed a crime. Adding

[2] *Smith v. United States*, 36 F.2d 548 (DC Ct.App, 1929).

confusion to this test is that from a psychological point of view, a person can have the inability to control their impulses from defects in their behavioral controls and other cognitive problems (Schmalleger, 2002; Slobogin, 2003).

The Durham Rule

The next major influence on the evolution of the insanity defense was the *Durham* case. In 1945, Monte Durham was discharged from the United States Navy, because a psychiatric examination found him unfit for military duty. He attempted suicide two years later, which led to a two-month commitment at a psychiatric hospital. Durham mental condition got worse after a lengthy prison sentence for auto theft and writing bad checks. Then in 1951, he was arrested for breaking and entering. In spite of being diagnosed several times by mental health professionals as mentally ill, the trial judge did not allow him to enter a plea of not guilty by reason of insanity. Durham was subsequently found guilty of breaking and entering at the trial. In 1954, the Court of Appeals for the District of Columbia overturned the conviction and instituted the *Durham* rule sometimes called the product rule (Ferdico, 2002; Gerald, 1997; Schmalleger, 2002).

In 1954, the Court of Criminal Appeals for the District of Columbia was headed by Judge David Bazelon and after reading court decisions as well as scientific literature concluded that all existing tests for legal insanity where either obsolete or flawed. Therefore, the court came up with its own standard, saying, "An accused is not criminally responsible if his unlawful act was the *product* of mental disease or mental defect."[3]

The problem with the *Durham* rule is that few mental health professional are hard pressed to describe the relationship between behavior and mental illness the same way the court did. Many psychologists argued that the product rule is out of touch with

[3] *Durham v. United States*, 94 U.S. App. D.C. 228; 214 F.2d 862, 874-75 (1954).

medical reality. Many Lawyers and judges also did not the product rule because they felt that it gave too much weight to the testimony of mental health professionals. To them cases could end up being decided solely based on the expert testimony of mental health professionals and felt that this placed too much power in the hands of these professionals (Becker, 1995; Costanzo, 2004; Moriarty, 2001).

The same District of Columbia court that produced the *Durham* Rule rejected it only eighteen years later in 1972 in *United States v. Brawner*. This standard attempted to take a "prevailing community standards" approach. The court in its ruling stated that, "a defendant is not responsible if at the time of his unlawful conduct his mental or emotional processes or behavior controls were impaired to such an extent that he cannot *justly* be held responsible for his act"[4]. This ruling defined insanity in terms of social justice, instead of the more commonly used legal and psychiatric definitions. Because of this, it was not adopted not well received and quickly fell out of favor. However, the *Brawner* decision helped lead to the adoption of the ALI test became favored by 26 states and the federal government (Schalleger, 2002).

The ALI Test

In 1955, in response to the dissatisfaction with all of these insanity standards and an attempt to clarify legal insanity the American Law Institute (ALI) created the substantial capacity test and incorporated it into the Model Penal Code. When drafting of the ALI test began the committee noted that the, "Drafting of a penal code presents larger intrinsic difficulty than that of determining when individual whose conduct would otherwise be criminal ought to be exculpated on the ground that they were suffering from

[4] *United States v. Brawner*, 471 F.2d 969 (1972).

mental disease or defect when they acted"[5] however they attempted to take on the task. When the substantial capacity test was finalized, they decided, "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 criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of the law."[6]

This ALI test made a few changes to the original McNaughton Rule by changing the word "appreciate" to "know" and to show the importance of irresistible impulse rules they used the phrase to "conform his conduct to the requirements of the law." It also takes into account modern psychological thought by using the word "substantial." This helps take into consideration that a defendant may have a mental illness, that could make him or her legally insane but also leaves the possibility that some mental capacity might be intact. This essentially created a two-prong test that was hoped would satisfy everyone. The first prong is a McNaughton like cognitive component. This prong tries to take into account a defendants inability to appreciate the wrongfulness of the act. While the other prong which is an irresistible impulse test tries to address a defendant who is unable to conform to the law. The ALI test has enjoyed great success and widespread incorporation (Borum & Fulero, 1999; Costanzo, 2004).

Diminished Capacity

The defense of diminished capacity (also called diminished responsibility), is allowed in some jurisdictions. Although, Diminished Capacity is not specifically an insanity defense it is used extensively in insanity trials. This defense claims that because of a mental condition, which is unable to exonerate the defendant of their guilt for the act,

[5] Model Penal Code, *Commentary*, Comment of Section 4.01 at 156-160 (Tentative Draft No. 4, 1955).
[6] Model Penal Code, Section 4.01(1).

the condition may still be of some relevance to the mental elements of certain crimes. In short, it the concept of saying that the defendant is guilty of the crime but due to circumstances there should be some mitigation of the defendant's responsibility. There is no commonly accepted definition for the term "diminished capacity" (also called "diminished responsibility"). Since there is no generally accepted definition for "diminished capacity" it has been left up to individual courts to determine when it can be used. The "diminished responsibility" defense first found use in Scottish common law courts and was a means to reduce the punishment of those who where considered "partially insane" and was used for all types of crimes from murder all the way down to petty offenses. Both the diminished capacity defense and the defense of insanity are similar in that the defendant was unable to form the *mens rea* at the time of the crime due to a mental illness. However, it differs from the insanity defense in that it is not possible to be found "not guilty", and will only be used when "relevant" to reduce the punishment the defendant will receive. For example, a first-degree felony defendant may try to reduce a charge to a second-degree felony by presenting evidence that shows that they were suffering under a mental defect or illness but will nonetheless result in a guilty verdict.

The Model Penal Code only allows for a diminished capacity defense when there is the possibility of capital punishment. Some jurisdictions have eliminated the diminish capacity defense altogether. For example, the California Penal Code has done away with the diminished capacity altogether saying, "The defense of diminished capacity is hereby abolished…"[7] , and that "there shall be no defense of diminished capacity, diminished responsibility, or irresistible impulse in a criminal action or juvenile adjudication

[7] California Penal Code, Section 25 (a).

hearing."[8] However, California still allows diminished capacity to have some effect on the *mens rea* requirement of a crime by providing for the "Evidence of diminished capacity or of a mental disorder may be considered by the court at the time of the sentencing or other disposition or commitment."[9]

Guilty but Mentally Ill (GBMI)

The *Hinckley* case reshaped the insanity defense in recent years and was the major force behind the Guilty but Mentally Ill movement. John Hinckley, Jr. was a loner and dropped out of college in 1976 for Texas Tech University. He then moved to Hollywood with the hope of making it big in the music industry. When he was in California, he became infatuated with the movie *Taxi Driver* and its star Jodie Foster. He was so obsessed with Jodie Foster that he packed up and left for Yale University, because that was where Jodie Foster was a student at that time. Hinckley was delusional and even tried to recreate a scene from the Movie *Taxi Driver* to win her love. To do this he attempted decided he would have to assassinate President Ronald Reagan. He caught up with the presidential motorcade and ended up wounding four people including President Regan. At trial, the defense experts found that Hinckley was suffering from severe psychological disturbances, and the prosecution's psychologists found the opposite. The judge at the *Hinckley* trial told the jurors to weigh the issue of his sanity in the terms of the Model Penal Code, which was then in use at the federal level. The jurors where told to return a "not guilty" unless they could agree "beyond a reasonable doubt" that Hinckley was sane. Since the expert witness could not agree on a verdict, it was almost certain that the jurors would not agree. This prove to be the case and Hinckley was found

[8] California Penal Code Section 28 (b).
[9] California Penal Code Section 25 (c).

not guilty by reason of insanity. John Hinckley is now serving a life sentence in a mental health institution (Bartol, 1994; Schmalleger, 2003).

There public was outrage by the verdict and this prompted over half of all the states to rewrite their insanity statutes returning to *McNaughton* like standards. Before the *Hinckley* verdict, ten of the thirteen federal courts of appeals and over half of the states adopted the Model Penal Code for use in their statutes. After the *Hinckley* verdict Idaho, Montana, and Utah with a handful of other states abolished the insanity defense altogether, allowing only for specific *mens rea* exceptions when the particular statue of a crime allows for it. Congress was even feeling the pressure and in 1984 passed the Crime Control and Prevention Act this act also included the Insanity Defense Reform Act (IDRA) of 1984. The Crime Control and Prevention Act effectively overhauled the insanity defense at the federal level, and the IDRA changed the insanity plea to an affirmative defense. These acts also effectively shifted the burden of proof onto the defendant and they where also required to prove the their plea "by clear and convincing evidence." Congress's idea behind this legislation was to limit the amount of evidence that could be used when an insanity plea was entered unless the evidence specifically showed the mental illness could excuse the conduct. It should be noted that this does not totally prohibit psychiatric evidence which is directly relevant to the crime at hand. For example, if a state of mind is part of the *corpus delecti* of a crime it can be introduced into evidence. Federal courts have also ruled that if "evidence negates *mens rea*… it negates an element of the offense rather than constituting a justification or excuse" and therefore can be introduced into evidence. All the states allow for psychiatric evidence that negates the *mens rea* requirement if it focuses on the defendant's state of mind at the

time the crime was committed. IDRA, also instituted a civil commitment process which provided for the defendant is found not guilty by reason of insanity to be held in custody until a court hearing on their state of mind could occur (the hearing has to be held within forty days of the verdict). At this hearing, the court decides if the defendant should be institutionalized either in prison or a mental health facility or released back into society (Bartol, 1994; Constanzo, 2004).

The second outcome of the *Hinckley* verdict was the creation of the Guilty but Mentally Ill (GBMI) verdict. In 1975, Michigan was the first state to pass a Guilty but Mentally Ill statue, all the states that subsequently adopted the GBMI verdict pattern their statutes after Michigan's law. Guilty but Mentally ill statues require the judge to inform the jury about the possibility of four verdict's which are guilty, not guilty, not guilty by reason of insanity, and guilty but mentally ill. In order for the jury to return a guilty but mentally ill verdict they must find that every element of the *corpus delicti* of the crime has been meet beyond a reasonable doubt. They also have to find that the defendant was *mentally ill* at the time the crime occurred, and that the defendant was not found to be *legally insane* at the time the crime was committed. The verdict of guilty but mentally ill is reached if the defendant satisfies the ALI's standards of *substantial capacity* and *wrongfulness*. For the defendant to be found legally insane only the McNaughton standard of *knowing* right from wrong is used. Since the McNaughton rule is harder to satisfy then the ALI test for mental illness it is more likely that a defendant would be found guilty but mentally ill instead of mentally insane (Constanzo, 2004; Schmalleger, 2002).

The finding of GBMI is equivalent to that of "guilty" verdict, because the defendant is sentenced just like a regular person who was found guilty would be. Most GBMI statues are similar to Michigan in saying that, "the defendant, although mentally ill, was [found] sufficiently in possession of his faculties to be morally blame worthy for his acts." After the offender is sentenced, they are then evaluated to see if they require psychiatric treatment and/or hospitalization. If the offender is found to be mentally ill and is hospitalized if they are later found "to be cured", then they will then be placed in a regular prison facility. The time spent in the hospital as well as in a correctional facility is suppose to count towards their sentence completion. When the offender sentence is served the offender will then be released even if they *still suffer* from a mental illness (Blunt & Stock, 1985; Smith, 1992).

The Effects of the Guilty but Mentally Ill (GBMI) verdict on the outcome of trials

Michigan was the first state to enact the Guilty but Mentally Ill verdict. Since that time, about 12 other states have passed similar statues. In the mid-1980's the Guilty but Mentally Ill verdict became increasingly popular, but within a few years fell out of popularity. Weiner in 1985 predicted that "it is likely to be revived in those states where a crime occurs which enrages the public when the defendant raises and/or succeeds with the insanity defense." This prediction has appeared to come true (Blunt & Stock, 1985; Weiner, 1985).

Even though the Guilty but Mentally Ill verdict has become popular with the public, it has also been the subject of intense criticism and debate. When the Guilty but Mentally Ill verdict was first introduced its original intent was to reduce the number of acquittals by reason of insanity. The GBMI verdict was also felt to guarantee the

treatment of the offenders who needed it. Most research has shown that especially the goal of treating the offender has never been meet. The Guilty but Mentally Ill verdict has also been criticized on both its legal and conceptual grounds by such organizations as the American Psychiatric Association, the National Alliance for the Mentally Ill, the American Psychological Association, and the American Bar Association (Borum & Fulero, 1999). The American Psychological Association has found that the "guilty but mentally ill verdict offers no help in the difficult question of assessing the defendant's criminal responsibility… if the defendant is so mentally diseased or defective as to not be criminally responsible for the offending act it would be morally obtuse to assign criminal liability"[10].

Most of the research does not show any significant reductions in the rates of acquittals after the Guilty but Mentally Ill verdict was implemented. Most of the data comes from the states of Michigan, South Carolina, Georgia, and Illinois, and suggest that after the enactment of the Guilty but Mentally Ill statue the overall rate of the insanity acquittals was unchanged. In Michigan, the number of not guilty by reason of insanity verdicts actually increased. The exceptions to this trend were the states of Pennsylvania and Georgia. Pennsylvania had a reduced number of not guilty by reason of insanity verdicts (NGBI), after the enactment of their Guilty but Mentally Ill statue. However, this appears to be due to the fact that their were a large number of not guilty by reason of insanity acquittals the year before and public backlash occurred. At the same time, as the NGBI verdict decreased Pennsylvania had shifted the burden of proof from the state to the defendant, so this further complicated the true effects of the Guilty but Mentally ill statue. Georgia also showed a decline in NGBI verdicts for certain crimes,

[10] American Psychiatric Association, *Statement on the Insanity Defense,* (Virginia: APA, 1983).

but it was found that the overall rate did not change. Between 1982 and 1983, the data had started to show a slight downward trend, but following data collection in another interval, the offenses with the greatest decline in NGBI verdicts actually started to show an increase and eventual upward trend of the overall rate of NGBI verdicts. Later analysis of the data also showed "no statistically significant effect" of the Guilty but Mentally Ill verdict to the overall rate of NGBI verdicts. Most of the data also found to that the decrease was due to altered judicial control over the commitment process of the NGBI defendants and not the GBMI statue. Again it was difficult isolate the true effects of the Guilty but Mentally Ill verdict with any certainty (Borum & Fulero, 1999).

In another study a mock trial was conducted with a sample of 140 undergraduate students the insanity case was presented through the use of audio tapes and slide presentations. The burden of proof was also placed on the state to see if this would have an affect on the verdicts. The mock trial scenario was an actual insanity case taken from the case files of Cook County in Illinois. The mock trial, scenario was designated the *State of Illinois v. John* Carlton, in which the defendant was accused of stabbing a female victim to death. The victim Melissa Craft was stab to death in a scenario and the case was set up to suggest that a premeditated first-degree murder had occurred. The defense counsel in this scenario entered a not guilty by reason of insanity plea. The defendant John Carlton was given a history of being hospitalized for psychiatric problems. He was subsequently diagnosed with "schizophrenic undifferentiated" and was released from a few months before after the symptoms went into remission. Carlton was also given a history of suffering from delusions that focused on religious persecution and women. In the trial the defense counsel introduced into evidence that John Carlton had heard voices

from God that told him to kill the victim. The sample group was then asked a series of questions about the case and their pre-deliberation process. The questionnaires measured attitudinal, evidentiary, and background variables. The jurors where then asked their verdict and the reasons for choosing their final verdict. The jurors who choose the guilty verdict tended to believe that the defendant could not be rehabilitated or that he really did not suffer from a mental illness (i.e. faking it). These jurors where found to be crime-control oriented in nature and supportive of the death penalty. The jurors who picked the NBMI verdict generally believed that the defendant was truly suffering from a mental illness or that a NGBI verdict would be beneficial to the defendant. They tended to be Due Process model oriented in nature. The researchers hypothesized that when the Guilty but Mentally Ill verdict was introduced their would be a reduction in the Not Guilty By reason of Insanity verdicts. They study also felt that the juror's point of view would affect the verdict they would choose. The results of the study supported these theories and a "significant displacement" in the Not Guilty by Reason of Insanity verdicts was found due to the introduction of the Guilty but Mentally Ill verdict. The study had strong evidence to confirm that the juror's point of view did affect the outcome of which verdict they choose. The jurors who choose the Not Guilty by Reason of Insanity believed that the defendant was not able to control his conduct and that he was suffering from a mental illness. The Jurors who choose the guilty verdict tended to believe that the defendant did not suffer from a mental illness and/or that the defendant could not be rehabilitated. On the other hand, the jurors who found the defendant guilty but mentally ill felt that the defendant could be rehabilitated but that he was not devoid of responsibility. This coincided with the fact that the guilty but mentally ill verdict

promised that the defendant would receive mental health treatment and evaluation. The jurors who choose the guilty but mentally ill verdict tended to be in the middle of the road on their beliefs towards the criminal justice system. The jurors who voted GBMI tended to be similar to the jurors who voted guilty in that they believed that the insanity defense was not effective in furthering the goals of justice. Two major limitations where found in this study. The first limitation is that since this was a simulated case the participants verdicts could have been affected (i.e. they may not have cared about the outcome). The second major limitation that was found was that the study focused specifically on pre-deliberation verdicts and did not see the whole process through. The researchers believe that without the GBMI verdict the participants would have been forced to either choose guilt or innocence and this would emphasize the belief and decision processes. They researchers further felt that the juror's who voted guilty but mentally ill would be more likely to assign a guilty verdict due to the fact that their views where in middle of the road and would then be influence by prevalent public opinion. Therefore, they propose further research that would study the effect of removing Guilty but Mentally Ill verdict (Bunt & Stock, 1985; Braithwaite & Poluson, 1997; Brondino, Poulson, & Wuensch, 1998).

Another study was a follow-up to Poluson previous research. In this mock trial, Poluson sample consisted of 327 undergraduates. Poluson used the exact case he used in his previous research. The same pre-deliberation format was used using questionnaires measuring attitudinal, background, and evidentiary characteristics. The participants where then asked their verdict and the reason for choosing it. He helps reduce the uncertainty of the participant’s verdicts by giving the trial with and without the option of

the GBMI verdict. It was impossible to overcome the second limitation of the study due to the fact that this the fact that trial was still a simulation. The study found a reduction of about two-thirds of the guilty verdicts and about one-half in the not guilty by reason of insanity verdicts when the GBMI verdict was introduced. The displacement that did occur in the verdict was found to be more significant than in his previous study. The GBMI verdict was again found to alter the outcome of the trial (Poulson et. al., 1998).

The Use of Insanity Pleas and Acquittals

On average, the insanity defense was used less than 1% of the time in felony cases. When the insanity plea was used, it was found to only be successful in 15-25% percent of the cases in which it was raised. The American Bar Association said, "Evidence suggests that the mental non-responsibility defense is raised in less than 1 percent of all felony cases in the United States and is successful in about a fourth of these."[11] The reason it appears to be used more often is that these types of cases usually get more publicity then the run of the mill trials. Furthermore, a survey of seven states, found that the average rate of insanity pleas ranged from .29 to 1.73 which worked out too an average of .85 (less than 1%) per 100 felony indictments. The surveys found that the success rate of the plea was about 28.1%. This was similar to the ABA findings of the success rate of the insanity defense (Borum & Fulero, 1999).

The usage of the different types of Insanity Pleas

As of the writing of this paper 26 states and the federal government have some implantation of the McNaughton Rule. The next most commonly used standard is the A.L.I. test, which has 20 states and the District of Columbia employing it. Three states

[11] American Bar Association Standing Committee on Association Standards for Criminal Justice, *Proposed Criminal Justice Mental Health Standards* (Chicago: ABA, 1984).

did not specify which test they used, and in Montana the insanity defense is not applicable. It was surprising to note that only three states currently use the GBMI verdict. Texas uses the McNaughton rule and the irresistible impulse test; they do not employ the GBMI verdict[12].

Conclusion

Most of the research tends to suggest that it cannot be determined with any reasonable amount of certainty that the guilty but mentally ill verdict has a statistically significant impact on the outcome of an insanity trial. However, common sense and anecdotal evidence seems to suggest that the Guilty but Mentally Ill verdict (GBMI) has some impact on the verdict albeit a very small one. The research does however show that the GBMI verdict consistently fails in the sense that it has not been utilized in the way the original drafters had intended the verdict to be used. All of the research showed that after a defendant was adjudicated guilty they did not receive the treatment necessary to help them with their mental health problems. The GBMI verdict has succeeded in reducing the numbers of acquittals due to insanity pleas. However, this is too the determent of the defendant and justice because when the GBMI verdict changed the outcome of the trial it did so in the favor of the guilty plea. More research needs to be done to determine the true impact of the Guilty plea. I suggest that more real world statistics be collected in the states that still have this verdict. The use of mock trials would be a good adjunct to the collection of statistics, but they have to be designed to affect only the guilty but mentally ill variable. This could be done in a two-step process using the same trial on the same individual but rating their choice after the guilty but mentally ill verdict is removed. I do

[12] Department of Justice & Bureau of Justice (1998). *The defense of Insanity: Standards and procedures, State Court Organization.*

believe that a person who is crime control model oriented would indeed pick the guilty verdict and the due process (i.e. defendant's rights) will opt for the non-guilty option if the Guilty but mentally ill verdict is removed. Another possible area of research is in the use of scientific jury selection (SJS) to seeing if the person's crime system preference could be negated by the use of the jury selection techniques.

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