Psychiatric Aspects of Criminal Responsibility: Insanity and Mitigation

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Forensic psychiatry expertise may be useful to criminal courts in several ways, including evaluating competence (e.g., to stand trial, waive Miranda rights, confess, plead, represent oneself, or be sentenced), assessing responsibility for alleged criminal behavior, and clarifying mental or psychosocial factors that may mitigate criminal charges or the form and severity of punishment. This column focuses on psychiatric/psychological aspects of mitigation in criminal matters. *(Journal of Psychiatric Practice* **2011;17:429–431**)

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A forensic psychiatry expert may be asked to render professional opinions at many different stages in a criminal proceeding. The issues to be addressed often include competence (e.g., to stand trial, waive Miranda rights, confess, plead, represent oneself, or be sentenced), responsibility for allegedly criminal behavior, and mental or psychosocial factors that may mitigate criminal charges or the form and severity of punishment. Typically, issues of competency are addressed first. If a defendant is found competent, the expert's attention may then be directed toward whether or not some mental factor affects the defendant's responsibility for the criminality of the act in question (legal sanity), and sometimes the *degree* of a defendant's responsibility for an alleged offense (mitigation*). Sanity and mitigating factors bear directly on issues of responsibility and outcome of the criminal proceeding.

The Insanity Defense

In most jurisdictions, sanity is adjudicated during the guilt/innocence phase of a criminal trial. Although elements of the insanity defense vary by jurisdiction, they essentially center upon a) whether or not a defendant had a mental disease or defect at the time of an alleged offense and b) if so, whether or not that defendant's mental disease or defect substantially impaired his or her ability to appreciate the nature of his or her actions or to differentiate (meaningfully) right from wrong. Some jurisdictions also consider whether or not the person was able to resist committing the allegedly criminal act (the concept of "irresistible impulse," the "volitional prong" found in some criminal responsibility statutes).

A successful insanity defense means that even though an allegedly criminal *act* was committed (*actus reus*), no criminal intent (*mens rea*) was present. Without criminal intent, there is generally no "crime" (there are exceptions), and therefore conviction and punishment by the State should not occur. For example, killing someone by accident, or as a legitimate part of a declared war, or in self defense usually does not meet legal criteria for the crime of murder.

If a criminal court determines that a defendant was insane (by the above definition in a particular jurisdiction) at the time of an allegedly criminal act, then he or she is found "not guilty by reason of insanity" (NGRI, sometimes called "not responsible by reason of insanity"). In that event, the acquitee is almost always ordered to a secure psychiatric facility for treatment, with regular assessments to determine whether or not he or she has improved sufficiently to no longer be a significant danger to others.

A 33-year-old male with a history of psychosis broke several light fixtures in the common area of a hotel and kicked a police officer. He was charged with Destruction of Property and Assault on a

*Mitigation" may imply either lessening or augmentation, but is used here, and in most legal settings, to describe a *decrease* in severity.

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Public Servant. During psychiatric evaluation, the defendant said that micro-transmitters implanted in the tips of his fingers allowed him to control an international system of space satellites used to monitor illegal activities of the Mafia. He believed he was "the undercover Vice-President of the United States of America" and was in the hotel protecting the President. The President's identity had been secretly revealed to him at lunch earlier in the day, when a stranger greeted him with a "meaningful" nod. Voices in the defendant's head had commanded him to secure the floor for the President's safety. Obeying those commands, he proceeded to destroy the light fixtures in the hallway.

The defendant resisted arrest because he believed the police officers were Mafia members dressed in police uniforms. He kicked the police officers, terrified that they intended to put him in the trunk of their car and kill him.

After ruling out alternative explanations, the psychiatric expert testified that the defendant met criteria for chronic schizophrenia, paranoid type, and, because of his psychosis, did not appreciate the wrongfulness of his actions (in that his actions were based on true delusions and hallucinations). The court determined that his mental illness precluded criminal intent and he was not criminally responsible for his actions. He was found not guilty by reason of insanity and committed to a secure psychiatric hospital for treatment.

Hospitalization after being found NGRI should not be considered "punishment," since the person has not been found guilty of a crime. Nevertheless, the hospitalization is involuntary and the criminal court often retains jurisdiction over the commitment. Political factors and public scrutiny routinely delay discharge of clinically deserving patients. Ironically, it is not unusual for hospitalization to exceed the jail or prison sentence the defendant would have received if convicted instead of having been found NGRI.

Controversy and misconception cloud the public's understanding of the insanity defense. Some refer to it as "the easy way out" or even "cheating the system." The publicity surrounding high profile cases leads the general public to believe that the insanity defense is used far more frequently than actually occurs. In reality, only about 1% of felony defendants plead insanity. Of those, 15%–25% are eventually adjudicated NGRI and about 80% of the latter are not contested by the prosecution.[1–3]

Mitigation

If an insanity defense is not being considered, or is likely to be unsuccessful at trial, then the defense, the prosecution, or the court itself may consider psychiatric/psychological mitigating factors in an effort to secure an equitable outcome.

Mitigation does not eliminate criminal responsibility. It addresses whether or not a defendant should bear full responsibility (e.g., whether or not a charge should be reduced) and/or whether or not punishment should be modified. Factors that may be considered pertain to characteristics of the defendant or circumstances of the offense. They include (but are not limited to) a defendant's age, intellectual capacity, psychosocial history, level of participation in the act, prior relevant acts and convictions, and the presence of intoxication, emotional distress, mental or physical illness, moral justification, and/or duress at the time of the act.

Mental health testimony can establish mitigating psychological factors,[4] thus affecting the ultimate outcome of a proceeding by decreasing the severity of the charge and/or the punishment. Although charges are defined by statute, the prosecution has great leeway in deciding whether and what charges will be assigned and their severity. Some "plea bargaining" is associated with psychiatric or psychosocial mitigating factors. Mitigation of a charge typically decreases the potential sentence, and/or affects the range of punishments available to the trier (court), to some extent lessening (but not eliminating) culpability.

A 24-year-old male with a history of bipolar disorder and nonadherence to medication hit his wife in the head, causing permanent blindness in one eye. During examination by a forensic psychiatrist, he related (and records confirmed) that he and his wife had been in counseling to address her infidelity. On the day of the incident, Valentine's Day, the defendant came home to surprise his wife with flowers and found her having sex with a close friend. He was infuriated and felt a "triple betrayal" due to the second affair, the involvement of his friend, and the dashing of his hopes of salvaging

his marriage. He admitted that the violence of his reaction was "all wrong"; he hit her only once and had not intended to injure her so severely.

The forensic psychiatrist's opinion was that, although the defendant met criteria for bipolar I disorder, his mental illness had not prevented him from appreciating the wrongfulness of his actions. The expert's report stated that the defendant's reaction to the extraordinary provocation was an aberration, not part of a violent pattern of behavior. There was no other history of physical abuse in the relationship. He had not planned to harm his wife beforehand, but struck her in the midst of intense emotional shock and turmoil triggered by the sudden realization of his wife's repeated deceit and contempt for his feelings.

Based largely on the forensic expert's report, the prosecutor determined that, due to the defendant's mental state and the circumstances of the case, the defendant should be charged with a Class A misdemeanor rather than felony Assault with Serious Bodily Injury, decreasing the sentencing range from 2–20 years in prison to a maximum of 1 year in jail and a $4,000 fine.

Extenuating factors and circumstances are often insufficient to lessen a defendant's charge(s). Nevertheless, they may influence a court's or jury's sentencing decision.

A 51-year-old physician robbed a bank and was indicted for Aggravated Robbery with a Deadly Weapon. The gun he used was a toy, but it appeared real. Bank personnel were terrified, and the defendant indeed robbed the bank. He was captured shortly after the incident, incarcerated, and charged. Because there was no doubt about his act and intent, he pled guilty.

Upon examination, it was clear that the defendant was competent to stand trial and that he did not meet legal criteria for insanity. However, the court considered a number of mitigating factors related to his background and psychosocial history. The forensic psychiatrist discovered that the defendant was raised by a cruel, alcoholic father who became especially violent and psychologically abusive when intoxicated. The defendant had a history of depression and was unable to recall any time in his life when he had felt happy. His chronic depression varied from moderate to severe, but psychiatric medication caused intolerable side effects and was discontinued. He experienced obsessive suicidal thoughts with frequent self-destructive behavior. He made his first suicide attempt (cutting his wrist with a razor blade) at age 14.

The defendant told the examiner that he longed "to feel normal…. Most days I think of killing myself two or three times. On bad days, I can't think of anything else." Feeling normal meant "not planning on killing myself,… to not feel dark and weighted down the majority of the time." He was prone to irritability and impatience and given to episodes of abrasiveness that caused his relationships with colleagues and patients to suffer. That behavior, in turn, caused severe problems in his practice and, ultimately, his financial status. His practice failed, his judgment and problem-solving capacity worsened, and he fell further into a downward spiral exacerbated by alcohol abuse.

The defendant was convicted of bank robbery, a federal felony. The judge took several mitigating factors into account before sentencing, including the defendant's trauma from being raised in a chaotic home with an abusive and alcoholic father, his mental illness, and the absence of prior arrests. Based on those mitigating factors, presented in part by a psychiatric expert witness, the judge ordered a substantial downward departure from federally-mandated sentencing guidelines and the defendant's sentence was significantly reduced.

An expert's assessment of sanity and mitigating factors often helps a court determine the level of a defendant's responsibility. This assistance may substantially influence the outcome of a criminal trial or hearing, adding an additional element of fairness to the proceedings.

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