

THE INSANE ARE A DYING BREED IN IDAHO  
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The Idaho State Journal's editorial on 7/10/06, "Some killers are more insane than others," spurred me to write to clarify one of the most commonly misunderstood psycholegal terms, namely "insanity." The recent acquittal of Andrea Yates, the mother who drowned her five children in Houston, Texas sealed the idea. The general public should bear in mind a few key ideas when they hear that term "insanity".

LAWS DEFINE INSANITY

Insanity is a legal term, not a psychological/psychiatric one - meaning you'll find the term codified in state and federal laws, not in psychiatric manuals like the *Diagnostic and Statistical Manual* (DSM-IV), published by the American Psychiatric Association. The term "insanity" was first codified in English law in 1843. Since the American legal system is based on English law, some U.S. states (including Texas) still use the original, and very conservative, English definition. It roughly reads:

*To establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind as to not know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong ( M'Naghten test of insanity).*

Modern legislators, as well as Congress, have revised the original definition several times. Currently, the Federal definition of "insanity" reads:

*[A] person is not responsible for criminal conduct if, at the time of such conduct, and as a result of mental disease or defect, that person was unable to appreciate the wrongfulness of such conduct (ABA, 1984).*

Most notable about all of the legal definitions of "insanity" is that the heinousness of a crime is not an element of the definition. As a psychologist who has evaluated a number of individuals who have opted or contemplated pleading "not guilty by reason of insanity," the alleged criminal act itself is of little concern to me in the evaluation process. The accused could have stolen a bushel of apples or be charged with publicly unthinkable crimes such as those associated with notorious cases like that of Andrea Yates and Jeffrey Dahmer ( Dahmer killed and cannibalized his victims). Referring to the legal definitions above, the psycholegal issue associated with insanity is an individual's mental status at the time of the crime. Severe mental illness may render a person unable to appreciate that what he/she is doing is wrong or not even know what he/she is doing. For example, if you suffer from a false belief that your neighbor is a member of a terrorist group set on committing random slayings across America beginning with you, and you shoot at him as he walks up to your door to show you his new hunting rifle, your mental status may be comparable to an individual who shoots at a perpetrator in self defense. It is possible for a serious mental illness to cause a person to truly believe their neighbor is a threat to their safety and the safety of their family even though in reality he is not.

False beliefs are part of some mental illnesses, sometimes, and in some people. False beliefs sometimes lead individuals to fail to appreciate what they are doing is wrong. It is not illegal to shoot someone in self defense. If, on the other hand you falsely believe your neighbor has told the FBI that you are a terrorist and ruined your reputation in the community and you shoot him with a motive of revenge, your mental status may be the product of a mental illness, but does not interfere with your appreciation the wrongfulness of your act. Revenge is never an acceptable motive for a killing.

My job as a forensic evaluator is to determine if a person, at the time of a crime, suffered from a mental illness, and whether the symptoms of that mental illness interfered with his or her ability to reason. In the Yates case(s), experts agreed that Mrs. Yates suffered from a bona fide psychiatric condition called post partum depression. Her depression was so severe that it resulted in irrational ideas. Her most problematic idea was that her children were becoming increasingly evil as they grew up, and the only way that she could save them from eternal damnation was to kill them while they were young.

#### JURIES DECIDE ON ISSUES OF INSANITY

Mental health professionals (MHPs) never decide whether a person is insane. Indeed, an MHP would never use the word “insanity.” Instead, expert testimony is presented to triers of fact, usually juries in high profile cases, who then take what they hear and attempt to determine whether what the expert said indicates that the accused meets the legal definition of insanity in their jurisdiction. Experts don’t always agree as mental status evaluations are considerably trickier than testing one’s blood sugar level. Hence, the job of juries, in cases like Andrea Yates, is ominous. The first Yates case was a notable example of differing expert opinions. Individuals interested in details of the Yates trials can check (<http://www.parkdietzassociates.com>). Interestingly, in both the first Yates case four years ago, and in the Dahmer case, juries decided that the defendants did not meet legal definitions of insanity underscoring my main point that heinousness does not directly relate to the concept of insanity. During the second Yates trial, which occurred following her successful appeal of her initial conviction, the jury knew that Mrs. Yates was aware that her conduct was illegal but they felt that she believed her actions were morally right and moreover, due to her delusions she was unable to conform to the requirements of the law. In other words the jury did not follow current Texas law which is based upon a defendant’s awareness of illegality. Juries don't always follow the law!

#### MENTAL STATUS AT THE TIME OF CRIME VS. AT TRIAL

Mental status at the time of the crime often has limited, if any, relationship to an accused’s mental status at the time of the trial. In order to stand trial fairly, an individual must fully understand what they are charged with, be able to fully participate in their defense and be able to make rational decisions about their legal situation. If they lack any of the above capacities, judges rule them to be incompetent to stand trial and commit them to treatment until their competency is fully restored. Even though a person may be ruled incompetent to stand trial he/she may not have been “insane” at the time of the crime. It is my understanding that the perpetrators in the Elizabeth Smart case in Utah have yet to stand trial because neither has been ruled competent to stand trial. The issue of insanity in their case may or may not ever become an issue.

## INSANITY IS A DEFENSE PLEA

Insanity is a legal term associated with a defense plea - Not Guilty by Reason of Insanity (NGRI). It is an option available to defendants and their defense team in addition to the two more common pleas, guilty or not guilty. If a defendant pleads NGRI, the burden is on him or her to prove that his or her mental status at the time of the crime meets this insanity definition. If successful, they are acquitted and committed for mental health treatment until deemed healthy and safe enough to return to the community. John Hinckley was acquitted of the crime of attempting to assassinate President Reagan in 1981. He remains hospitalized in a psychiatric facility in the D.C. area. Andrea Yates will be transferred from a Texas correctional facility to a state hospital for treatment. While Hinckley and Yates were successful in their NGRI pleas, few defendants are (1%). Being so difficult to prove, only a few criminal cases go to trial using the NGRI option (1%).

## INSANITY DOES NOT EXIST IN IDAHO

A legal definition of insanity no longer exists in Idaho (nor is it codified in Montana, Utah, Nevada, or Kansas). So, Idaho defendants do not have the option of pleading NGRI. The option was eliminated when the Idaho legislators struck the term “insanity” from Idaho code in 1982, shortly after John Hinckley’s acquittal. All of Idaho’s insanity acquitees were tried before that date. I believe one remains hospitalized at State Hospital South. The remainder has either passed away or was released. Hence, unlike the statements in the ISJ editorial, Mr. Time will not be able to plead NGRI even if his defense team feels that it is in his best interest to do so. Only Idahoans whose cases land in federal court have an NGRI plea option. Neither the heinousness of the defendant’s crime nor the seriousness of his mental illness can lead to a jury making decisions about insanity in Idaho. Individuals with serious mental illness, including those with irrational delusions precluding their ability to determine right from wrong, have been incarcerated in Idaho prisons since 1982. No one has been ruled insane in Idaho in 24 years.

I hope these five points help ISJ readers understand this confusing interface of psychological and legal issues.

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