Sanctum Sanctorum: The Psychiatrist's Role in Posttrial Competency Examination of Jurors

Robert Lloyd Goldstein, MD, JD

The scope of forensic psychiatry has continued to expand into new areas, despite ongoing criticism on the part of both those who fear further encroachments by the psychiatrist within the legal arena and those who warn that he has already exceeded the limits of scientific expertise and responsible self-restraint at the psycho-legal interface. In a series of articles and books, I have advanced the thesis that psychiatry has already established itself as an inextricable cog in the machinery of the law and that the system is far better off availing itself of psychiatric expertise, when the alternative is leaving the judge and jury to their own devices and the pitfalls of uninformed ignorance and commensense myths and misconceptions.

After the verdict has been reached, psychiatrists may be called upon to evaluate the competency of a juror at the time of trial, thereby invading the sanctum sanctorum of the legal system itself, i.e., the jury, in much the same way that Freud penetrated beyond the apparently rational facade of the human mind to expose the irrational workings of the unconscious, which were hidden from view. There is great judicial reluctance (or perhaps, more aptly, "resistance") to permit any inquiry into the state of mind of any juror during his deliberation, even when evidence is brought forward that raises doubt about the competence of that juror.*

This is so, despite the fact that it is an unchallenged cornerstone of our system that the accused in a criminal trial has the right to have his case...
tried by an impartial jury, all of the members of which are competent throughout the trial. This is best conceptualized as a clash between two undeniably valid and worthy principles: the need to protect the sanctity of the jury room (and the privacy of individual jurors) versus the defendant’s full panoply of due process rights subsumed under his right to a fair trial.

In order to preserve the inviolability of the deliberative process, an inquiry into the inner workings of the jury or the state of mind of an individual juror is barred unless a preliminary showing of juror incompetence or misconduct has been made. Only when there is clear and incontrovertible evidence of juror incompetence during jury service, of improper external influence brought to bear on a jury (e.g., bribery), of some objective fact of internal impropriety in the jury (e.g., the existence of a blood relationship between a juror and the prosecutor), or of a juror’s manifest racial bias against the defendant, will, in “the gravest and most important cases only,” judicial reluctance about further inquiry be overcome. With respect to posttrial evidence of possible juror incompetence during the trial, courts have been willing to set aside a verdict only under the most stringent conditions. As one court said:

"cases might arise in which it would be impossible to refuse evidence of impropriety (or incompetence) without violating the plainest principles of justice. But unquestionably (even in those cases), such evidence ought to be received with great caution (emphasis supplied)."

This strong policy against any postverdict inquiry into a juror’s state of mind and conduct during deliberations rests upon sound reasons. To make what was intended to be a most private deliberation the frequent subject of public scrutiny would seriously compromise and chill the frankness and freedom of discussion that is the heart of a jury’s work. Jury deliberations would perforce become inhibited and self-conscious. The jurors themselves ought not to be subjected to harassment, intimidation, and invasion of privacy. Courts ought not to be burdened with large numbers of worthless applications to overturn jury verdicts on specious grounds. Jury verdicts ought not to be so uncertain.

Thus, only strong evidence that it is likely that a particular juror was incompetent at the time of the trial will justify an inquiry into whether such incompetence did exist. Following are two case reports in which the issue of juror incompetence was raised after trial (by the defense in Case 1 and by the prosecution in Case 2). Both cases illustrate the court’s resistance to dealing with this issue. In both cases it was argued that the juror’s psychiatric illness (which came to light after the trial) had specifically interfered with his ability to function as a competent juror. In the first case, psychiatrists were not permitted to examine the juror and no hearing was held; in the
second case, a court appointed psychiatrist examined the juror, submitted a report, and testified at a hearing, but a psychiatrist retained by the defense was not allowed to testify as to his opinion.

Case 1

United States v. Dioguardi Dioguardi was convicted of violations of the Federal Securities Laws, after a three-week jury trial in 1973. Prior to sentencing, he moved for a new trial or at least for an evidentiary hearing. The basis for this motion was a bizarre and unsolicited letter from one of the jurors, addressed to the defendant, which strongly suggested that that juror had been incompetent during the trial. The letter referred explicitly to the juror’s belief in her powers of clairvoyance and mental telepathy: “I have eyes and ears that I can see things before it happen [sic]. I can tell you about others and what they are thinking and doing. If I am wrong about this it is the first time.” She went on to relate that she had been cursed and as a consequence she could tell what was really going on at the trial. She noted that she had been able to read the defendant’s mind during the trial and that, if he repented, he would be saved by the good within him.

Seven psychiatrists were retained by the defense to review the juror’s letter and to render an opinion as to her competence. All seven psychiatrists concluded that, based on their review of the letter, the juror in question appeared to be psychotic. She manifested grandiose delusions, possible hallucinations, and an inability to distinguish reality from fantasy. They agreed that a clinical examination of the juror would be necessary in order to reach a precise diagnosis, but based on what they already knew about her, they could infer that she had most likely been incompetent to function as a juror at the time of trial.

The court, however, enjoined them from carrying out any such examination and went on to conclude that

only strong evidence that it is likely that the juror suffered from such incompetence during jury service will justify an inquiry into whether such incompetence did in fact exist. In our view the juror’s letter and the essentially horseback uninformed opinions of the psychiatrists regarding the letter fall considerably short of justifying any further inquiry.

The court went on to say that no evidence had been proffered of any history of mental instability or of any adjudication of insanity or incompetence at any time in the juror’s past. She had been steadily employed and had performed satisfactorily at voire dire during the trial itself, and during jury deliberations. Neither the trial judge nor her fellow jurors had noted

† Voire dire refers to the preliminary examination of prospective jurors before trial by the court or the attorneys, in order to determine whether or not they are to be selected to serve on the jury.
anything peculiar or disturbed about her countenance or conduct. The court noted its distrust of psychiatric opinions in general as well as in this specific instance, when it said

[although the opinions of experts are not to be dismissed altogether, they were here of necessity formed in a vacuum, based on one piece of evidence and fall far short of constituting the sort of “objective fact” which can justify inquiry into the internal workings of the jury.]

The dissenting judge, in a sharply worded opinion, said

[the letter is staggering in its implications. No special training is needed to appreciate that this juror seems to believe that she is clairvoyant and could see things that could not be apparent to others, such as what people think or an event before it happens. If she did believe she was clairvoyant in this way, is it really necessary to point out why she could not fairly try the guilt or innocence of any man? It seems obvious that a “clairvoyant” juror might honestly “see” a defendant’s guilt despite the lack of evidence because she can see into the defendant’s mind. Or conversely, she might for the same reason divine a defendant’s innocence in the face of overwhelming proof of guilt. In fact, a person who was known, before trial, to regard herself as clairvoyant would certainly not be allowed on a jury in the first place. . . . Although it is true that once a trial is over there is great judicial reluctance to inquire into the state of mind of a juror during his deliberations, reluctance to inquire is not the same as obdurate refusal to face facts, especially such “objective facts” as a rambling unsolicited letter sent 13 days after the verdict that strongly suggests mental illness.]

The Dioguardi case is a striking example of the powerful resistance on the part of the court to permit any inquiry into the state of mind of a juror. Even unanimous and uncontradicted psychiatric opinion that a juror was incompetent at the time of trial will be lightly dismissed as essentially horseback uninformed, when a court is determined to protect the sanctity of the jury.

Case 2

Sullivan v. Fogg Sullivan was convicted in 1973, after a jury trial, of two counts of murder. One month after trial, one of the jurors complained to the District Attorney of “harassment by voices.” At the request of the District Attorney, the juror in question voluntarily appeared before the original trial judge and stated that he had heard voices and vibrations throughout the trial, which he believed had been transmitted from overflying airplanes through the steam pipes in the courtroom. He believed that the defendant was responsible for these phenomena and was thereby attempting to influence his vote during the jury’s deliberations. After trial, the voices continued to berate him, calling him an assassin, because he had voted to convict an innocent man. (Although the voices had instructed him to acquit
the defendant, he had voted to convict because he believed that the voices had been sent by the defendant and his confederates."

Like the juror in the preceding case, he had appeared to be quite normal on the surface during the proceedings. Likewise, he also had made a stable occupational and social adjustment like the *Dioguardi* juror. However, on a prior occasion of jury service, he had experienced similar hallucinations. On that previous occasion, he had refrained from bringing it to anyone's attention. In this case, the trial judge went further than in *Dioguardi*, by pursuing an inquiry into the juror's competence by appointing a psychiatrist to examine the juror (who complied voluntarily) and to submit a written report of his findings and conclusions. The court-appointed psychiatrist concluded that the juror suffered from a *schizoid personality with paranoid features* and that

he heard the voices, but they did not influence him and his logic in evaluating the factors in the trial and coming to the conclusion that he did was quite sound. Although he heard the voices, he had not formulated them into a systematized delusion. . . . He was competent to make a rational judgment on the merits of the case presented to him in court.18

The court, on the basis of the psychiatric report, found that the juror had been competent. The defendant appealed, claiming that it was not sufficient for the court to obtain the written report of a psychiatrist and that further inquiry was needed; i.e., that the defendant had been denied due process in that the defendant had not been allowed to cross-examine the court-appointed psychiatrist at a hearing nor allowed to present the opinion of his own privately retained psychiatrist. The defendant contended further that (1) the psychiatric examination conducted by the court-appointed psychiatrist had been too cursory; (2) the diagnosis of personality disorder rather than of psychosis was clearly erroneous (and may have reflected that psychiatrist's penchant for labeling patients in as euphemistic and favorable a light as possible); and (3) the juror's mere statement to the psychiatrist that he had remained impartial in the face of potentially prejudicial influence was not conclusive.

In January 1980, seven years after trial, the United States Court of Appeals for the Second Circuit ordered a reopening of the hearing. The court said “[i]n light of the serious question as to the juror's competence, we think that due process requires at least the opportunity to test [the doctor's] opinion on cross examination.”19

A hearing was held and the defendant was allowed to cross-examine the court-appointed psychiatrist about his conclusions regarding the juror's competence at the time of trial. Once again, the trial court determined that the juror had been competent. The defendant has appealed that determi-
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nation, contending that, in order to satisfy due process, the court must go further and allow a psychiatrist retained by the defendant to testify on the issue of juror competence in this case.

In both cases, Dioguardi and, to a lesser extent, Sullivan, there seems to be a powerful resistance on the part of the court to the intrusion of psychiatric expertise, when the sanctum sanctorum of the jury is under siege. The serious potential for injustice of the court’s resistance to such inquiries is apparent when, as in the two cases presented, the court refuses to set aside a guilty verdict in major felony cases, even when it becomes clear that one of the jurors was psychiatrically impaired to the extent that his psychotic misperceptions and distortions directed his verdict.

When this happens, it deprives the defendant of the full benefit of the constitutionally mandated safeguards and protections to which he is entitled in order to receive a fair trial. Under our judicial system, which is so dependent upon a public perception of its fundamental fairness and integrity in order to maintain its moral authority, such a result tarnishes the image of justice. It behooves the courts to recognize the implications of this problem and to work together with concerned psychiatrists to establish sound and workable criteria by which to determine the competence of jurors and to apply such criteria when a sufficient showing of juror incompetence has been made.

References

8. McDonald v. Pless, 233 U.S. 234, 269 (1915)
10. Miller v. United States, 403 F.2d 77 (2d Cir. 1968)
12. United States v. Dioguardi, 361 F. Supp 954, aff’d, 492 F.2d 70, cert. denied, 419 U.S. 873
13. Ibid
15. Ibid
16. Ibid, (Feinberg J. dissenting)
18. Ibid