Mental Illness and Mental Health Defenses: Perceptions of the Criminal Bar

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As the number of state mental hospital beds declines, persons with persistent mental illness are increasingly encountered by those working in the legal system. Attorneys may have little experience in working with this population. This research involved a 32-item written survey of the 492 members of the criminal bar in South Carolina. Demographic variables were surveyed, and attorneys were asked to define two common terms describing mental illnesses (delusion and psychosis) and the legal criteria for verdicts of not guilty by reason of insanity and guilty but mentally ill. They were also asked to identify the most severe mental illness (schizophrenia). Attitudes about these verdicts and about working with defendants who are mentally ill were also surveyed. Results indicate that attorneys are fairly knowledgeable about mental illness, but not verdicts involving mental illness, particularly the verdict of guilty but mentally ill. Most attorneys prefer to work with clients who do not have mental illness. However, as they become more experienced interacting with defendants who are affected by mental illness, they become more knowledgeable and are more willing to defend them. A large majority believe that their law school education about mental illness was inadequate. When comparing attorney occupations, public defenders were the most knowledgeable about mental illness and mental health defenses, followed by prosecutors and private defense attorneys. Judges were the least knowledgeable group.

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A large number of persons with severe and persistent mental illness are incarcerated in correctional facilities worldwide, and the number continues to rise in the United States.[1] The increase in the incarceration of those with mental illness is due to several factors, including a reduction in available state mental hospital beds, lack of sufficient community mental health treatment, and an overall increase in rates of imprisonment in the United States.[2] In studies in which samples have been controlled for demographic differences, rates of mental illness among incarcerated offenders have been found to be at least double the comparable rates in the general population.[3] In one systemic review of surveys, the prevalence of psychotic disorders was 3 to 7 percent, major depression 10 percent, and personality disorder 65 percent in correctional populations.[4] In the nation's largest state prison system (Texas), schizophrenia and other psychotic disorders have a prevalence rate of 3.8 percent.[5]

Before entering the correctional system, defendants are adjudicated in the criminal court. The process involves a series of hearings, including arraignment and bond setting, preliminary hearings (e.g., evidentiary and waiver hearings in juvenile court), trial, and sentencing. Defendants with mental illness have numerous special interests within the process of adjudication. For example, in some jurisdictions, they may be eligible for diversion to a mental health court. There may also be concerns about their competency to stand trial or their mental state at the time of the alleged offense. For these matters to be raised before the court, the defendant's mental illness must be recognized by someone involved in the process. The Supreme Court has held that the need for a capacity-to-stand-trial evaluation can and should be posed by any court officer (i.e., attorney, judge, or prosecutor) at any step in the legal process.[6] Little is known about how attorneys and prosecutors recognize mental illness in a defendant. Attorney training in basic mental illness recognition and mental health law may be inadequate. In addition, little is known about attorneys' attitudes toward clients with mental illness and mental health defenses, as there have

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been few studies examining their feelings on the topic. Such defendants depend on their attorneys to advise them of defenses available to them and to make recommendations about whether such a defense of mental illness is in their best interest. Unfortunately, this type of legal decision may be made with little client involvement.[7] In one study of attorneys, defense lawyers were more in favor of a defense of not guilty by reason of insanity (NGRI) and expressed attitudes that supported the defense, whereas prosecuting attorneys were more opposed to it.[8] This study also demonstrated that defense attorneys may use a potential NGRI defense to negotiate a more desirable plea bargain. In regard to the verdict of guilty but mentally ill (GBMI), prosecutors tend to favor this verdict, as they believe it will reduce acquittals for reason of insanity.[9]

The purpose of this study was fourfold:

to survey the criminal bar's knowledge about psychotic mental illness and their attitudes about defending or prosecuting those with mental illness;

to explore attorney understanding and attitudes about verdicts predicated on mental illness;

to examine correlations of demographic characteristics, experience, and job position with knowledge and attitudes among different legal professions (prosecutor, public defender, private defense attorney, or judge); and

to examine attorneys' satisfaction with their training in recognizing mental illness and understanding mental health law as it applies to criminal courts.

Verdicts in South Carolina in Cases Raising a Defense of Mental Illness

South Carolina has two statutorily defined verdicts that are potentially applicable to defendants with mental illness: not guilty by reason of insanity (NGRI) and guilty but mentally ill (GBMI). Both verdicts were established in 1984 in South Carolina after the passage of the Federal Insanity Defense Reform Act (IDRA) the same year,[10] after the insanity acquittal of John Hinkley following his assassination attempt on President Ronald Reagan. To be adjudicated NGRI, the court must find that a defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.[11] Recognizing the difficulty in proving the NGRI defense styled after the *M'Naughten* rule, the South Carolina legislature enacted another statute in 1984 that created a GBMI verdict. The definition of the GBMI verdict was adopted from the volitional prong of the American Law Institute (ALI) Model Penal Code.[12] To be adjudicated GBMI, a defendant must be found to have had the capacity to distinguish right from wrong or to recognize his act as being wrong, but because of mental disease or defect, to have lacked the capacity to conform his conduct to the requirements of the law.[13] In both verdicts the burden of proof lies with the defense by a preponderance of the evidence. Defendants adjudicated NGRI are confined to a psychiatric hospital for a minimum of 120 days, after which they can be released only by the trial court. Persons adjudicated GBMI are incarcerated in the South Carolina Department of Corrections but undergo psychiatric evaluation at the beginning of their sentence. Most are placed in the general prison population within 1 month.[14] Jurors are instructed about the definitions of these verdicts before deliberation, but are not allowed to be instructed on the dispositional outcomes. The South Carolina Supreme Court, in *State v. Rimert*,[15] ruled that instruction about dispositional outcomes does not aid the jury in its function. The U.S. Supreme Court also held that instructing a jury in federal cases on the consequences of an NGRI verdict is improper under the Insanity Defense Reform Act of 1984.[16] Other state jurisdictions vary on this question.

Inmates who are adjudicated GBMI are not exempt from a capital sentence. South Carolina is the only state to have sentenced an inmate to death who was adjudicated GBMI because he lacked volitional control over his actions at the time of his offenses.[17] In states using the ALI Model Penal Code, not only would such a person avoid the death penalty, he would be likely to be confined to a mental hospital as a result of having been found NGRI.

Method

This study was approved by the Institutional Review Board (IRB) of the University of South Carolina. A 32-item written survey (Table 1) was mailed to the members of the criminal law division of the South Carolina Bar ($N = 492$). After this first mailing, 187 responses were received (38%). Another mailing of the survey was sent 12 weeks later to nonresponders, which resulted in another 70 responses, for a total of 257 responses (52.2%). Two of the

Table 1 The Survey

Please answer the following questions. In order to preserve research validity, please do not consult with texts, statutes, or colleagues prior to completing the survey. Please circle the best answer. If you do not know the answer, please guess.

Which of the following most closely describes your occupation?
1. Prosecuting attorney
2. Public defense attorney
3. Judge
4. Private defense attorney

How long have you been a prosecutor or defense attorney?
1. 0–3 years
2. 3–5 years
3. 5–10 years
4. >10 years

How long have you been practicing law in general?
1. 0–3 years
2. 3–5 years
3. 5–10 years
4. >10 years

Where did you attend law school?
1. Southeast United States
2. Northeast United States
3. Midwest United States
4. Southwest United States
5. Western United States
6. International degree

Did you receive any instruction in law school about mental illness?
1. Yes
2. No

Did you receive any instruction in law school about mental health law?
1. Yes
2. No

Do you feel that your education about mental health issues was adequate?
1. Yes
2. No

Have any of the following suffered from a severe mental illness, such as Schizophrenia, Bipolar Disorder (Manic Depression) or Major Depression?
1. You
2. Friend
3. Family member
4. None
5. Other (neighbor, coworker, etc.)

How prevalent is mental illness among criminal defendants?
1. <5%
2. 5–15%
3. 15–25%
4. >25%

How many cases have you prosecuted or defended that have involved an individual with mental illness?
1. No cases
2. 1–5 cases
3. 6–15 cases
4. >15 cases

How many cases have you prosecuted or defended that involved a **Not Guilty by Reason of Insanity (NGRI)** defense or outcome?
1. No cases
2. 1–5 cases
3. 6—5 cases
4. >15 cases

How many cases have you prosecuted or defended that involved a **Guilty but Mentally ill (GBMI)** plea or outcome?
1. No cases
2. 1–5 cases
3. 6–15 cases
4. >15 cases

Which of the following is the correct definition of a **delusion**?
1. A false belief firmly held by the patient despite evidence to the contrary
2. A false sensory perception, such as seeing or hearing things that are not present
3. Impairment of thinking where a patient becomes disoriented to time, place, or events
4. A rapid succession of fragmentary thoughts or speech in which content changes abruptly

Which of the following is the correct definition of **psychosis**?
1. A loss of contact with reality
2. Rapidly shifting mood states
3. Repetitive behaviors such as counting or hand washing
4. A loss of contact with reality; persistent and extreme elevation in mood

Which of the following is the most severe and chronic mental illness?
1. Major depression
2. Bipolar disorder
3. Schizophrenia
4. Obsessive compulsive disorder

South Carolina has two mental illness verdicts: Not Guilty By Reason Of Insanity (NGRI) and Guilty But Mentally Ill (GBMI). Please circle the best answer to the following questions involving these verdicts.

What do you think the verdict **Not Guilty by Reason of Insanity (NGRI**) means?
1. The defendant has a severe mental illness and cannot stand trial.
2. The defendant had mental illness at the time of the crime.
3. The defendant who committed the crime had a mental illness that prevented him from understanding that what he did was wrong.
4. The defendant who committed the crime had a mental illness that prevented him from controlling his actions according to the law.

Table 1 Continued

What do you think the outcome of the **Not Guilty By Reason Of Insanity (NGRI)** verdict *is* for a serious felony such as murder, assault and battery with intent to kill, rape, etc?

1. The defendant goes home.
2. The defendant goes to prison.
3. The defendant goes to a psychiatric hospital for treatment and then is transferred to a prison when stable enough to complete his sentence.
4. The defendant goes to a psychiatric hospital for treatment and then is released to go home when determined not to be dangerous to self or others.

What do you think the outcome of the **Not Guilty by Reason of Insanity (NGRI)** verdict *should be* for a serious felony such as murder, assault and battery with intent to kill, rape, etc?

1. The defendant goes home.
2. The defendant goes to prison.
3. The defendant goes to a psychiatric hospital for treatment and is transferred to a prison when stable enough to complete the sentence.
4. The defendant goes to a psychiatric hospital for treatment and is released to go home when determined not to be a danger to self or others.

What do you think the verdict **Guilty But Mentally Ill (GBMI)** means?

1. The defendant has a severe mental illness and cannot stand trial.
2. The defendant had mental illness at the time of the crime.
3. The defendant who committed the crime had a mental illness that prevented him from understanding that what he did was wrong.
4. The defendant who committed the crime had a mental illness that prevented him from controlling his actions according to the law

What do you think the outcome of the **Guilty But Mentally Ill (GBMI)** verdict *is* for a serious felony such as murder, assault and battery with intent to kill, rape, etc?

1. The defendant goes home.
2. The defendant goes to prison.
3. The defendant goes to a psychiatric hospital for treatment and is transferred to a prison when stable enough to complete the sentence.
4. The defendant goes to a psychiatric hospital for treatment and is released to go home when he is determined not to be a danger to self or others.

What do you think the outcome of the **Guilty But Mentally Ill (GBMI)** verdict *should be* for a serious felony such as murder, assault and battery with intent to kill, rape, etc?

1. The defendant goes home.
2. The defendant goes to prison.
3. The defendant goes to a psychiatric hospital for treatment and is transferred to a prison when stable enough to complete his sentence.
4. The defendant goes to a psychiatric hospital for treatment and is released to go home when he is determined not to be a danger to themselves or others.

Which of the following crimes/offenses would influence your decision to recommend an NGRI plea?

1. Felony offense with a >10-year potential sentence
2. Felony offense with a <10-year potential sentence
3. Misdemeanor offense
4. Makes no difference
5. Would never recommend

Which of the following crimes/offenses would influence your decision to recommend a GBMI plea?

1. Felony offense with a >10-year potential sentence
2. Felony offense with a <10-year potential sentence
3. Misdemeanor offense
4. Makes no difference
5. Would never recommend

In you opinion, should jurors be told the potential outcome of a verdicts such as Not Guilty By Reason of Insanity (NGRI) or Guilty But Mentally Ill (GBMI) before they have to decide the verdict in a case?

1. Yes
2. No

Do you think that if jurors knew the outcome it would influence their decision?

1. Yes
2. No

Do you think that a defendant found GBMI can receive the death penalty?

1. Yes
2. No

Should the NGRI verdict be eliminated?

1. Strongly agree
2. Somewhat agree
3. Neutral
4. Somewhat disagree
5. Strongly disagree

Table 1 Continued

Should the GBMI verdict be eliminated?		
1. Strongly agree		4. Somewhat disagree
2. Somewhat agree		5. Strongly disagree
3. Neutral		
I would rather defend or prosecute clients who do not have mental illness		
1. Strongly agree		4. Somewhat disagree
2. Somewhat agree		5. Strongly disagree
3. Neutral		
What is your age?		
What is your sex (circle one)?	Male	Female
Are you married (circle one)?	Yes	No

returned surveys were not included for analysis because more than 10 questions remained unanswered.

Demographic variables examined included age, gender, marital status, attorney type (prosecutor, public defender, private defense attorney, or judge), experience in years practicing law and practicing in the current position, geographic area of law school, history of instruction about mental illness or mental health law, and number of cases involving defendants with mental illness and defenses predicated on mental illness. Attorneys were also asked about their personal experience with mental illness in themselves, family members, friends, or others.

Knowledge of mental illness was assessed with three multiple-choice questions asking the respondents to identify correctly the most severe and chronic mental illness ("schizophrenia") and to define the clinical terms "delusion" and "psychosis" from multiple-choice answers.

Knowledge and attitudes about verdicts in cases with a mental illness defense were assessed by asking the participants to identify the correct legal definition and dispositional outcomes of the NGRI and GBMI verdicts and to select what they believe the definition of each verdict and dispositional outcome should be. They were also asked whether defendants adjudicated GBMI could receive a death sentence in South Carolina. Finally, they were asked whether they believed the NGRI or GBMI verdicts should be eliminated and whether they would rather defend and prosecute defendants who do not have mental illness.

Survey Results

Demographic variables are summarized in Table 2. Our response sample was predominately male and predominately private defense attorneys or public defenders.

Table 3 summarizes attorney experience in working with defendants with mental illness or using, prosecuting, or adjudicating a mental illness defense. Although it appears that the prevalence of defendants with mental illness is relatively high, the rate of use of such a defense is low.

Table 2 Demographic Variables and Experience

Variable	Data
Age, years	26–73 (mean, 45.64)
Gender	
Male	80
Female	20
Marital status	
Married	76
Unmarried	24
Current occupation	
Private defense attorney	57
Public defender	23
Prosecutor	17
Judge	3
Years in current job	
≤3	10
4–5	12
6–10	20
>10	58
Mental illness instruction in law school	
Yes	26
No	74
Mental health law Instruction in law school	
Yes	17
No	83
Mental health instruction adequate	
Yes	15
No	83
Unknown	2
Personal experience with mental illness	
Self	5.6
Friend	35.8
Family	29.9
Other	8.6
None	31

Data are percentage of analyzed responses, unless stated otherwise. $N = 255$.

Table 3 Experience With Defendants with Mental Illness and Mental Health Defenses

Experience	Occurrence
Prevalence of mental illness among defendants	
<5%	9
5–15%	29
15–25%	28
>25%	31
No answer	3
Number of cases involving mental illness	
None	4
1–5 cases	20
6–15 cases	18
>15 cases	58
Number of NGRI cases	
None	44
1–5 cases	44
6–15 cases	9
>15 cases	3
Number of GBMI cases	None
None	42
1–5 cases	44
6–15 cases	10
>15 cases	4

Data are percentages of respondent groups. $N = 255$.

Responses regarding attorneys' knowledge of psychotic mental illness revealed that 71 percent correctly identified the definition of delusion, 87.5 percent correctly identified the definition of psychosis, and 72.5 percent identified schizophrenia as the most severe and chronic mental illness.

Responses to questions measuring knowledge about mental illness verdicts and outcomes are summarized by attorney type in Table 4. Attorney experience with defendants with mental illness and mental illness verdicts is outlined in Table 5 by attorney type. Finally, attitudes toward defendants with mental illness and mental illness verdicts are presented in Table 6 by attorney type.

A significant number of attorneys (27%) mistakenly believed that GBMI is defined as merely having mental illness at the time of the offense, not necessarily as lacking the capacity to conform behavior to the requirements of the law. Also a large majority (82%) mistakenly believed that persons adjudicated GBMI go to a hospital outside of prison before they are sent to prison. Almost half of the attorneys (41%) erroneously believed that a person found GBMI could not receive the death sentence.

Questions assessing attorney attitudes revealed that most attorneys believe an NGRI outcome should involve hospitalization and then release (86%) and that a GBMI outcome should involve hospitalization before prison. A majority of attorneys (81%) indicated that the severity of the crime and potential punishment are not factors that are considered when deciding whether to seek an NGRI verdict. Similarly, a majority (76%) indicated that the severity of the crime does not influence the decision to pursue a GBMI verdict. Most attorneys favor the existence of the NGRI verdict (77%). They are slightly less enthusiastic about the GBMI verdict (62% favor its existence). Also, most attorneys (57%) believe that jurors should be informed of the dispositional outcome of the NGRI and GBMI verdicts, a practice that is not currently allowed by law in South Carolina. A large majority (96%) believe that dispositional outcome should influence a juror's decision in arriving at a verdict.

Half of the attorneys surveyed would rather work with individuals who do not have mental illness, and 37 percent were neutral in their response to this question, leaving only 13 percent to indicate that they are just as happy working with defendants with mental illness as with other defendants. The public defenders, compared with other occupations, were most in favor of allowing an NGRI defense (89%) and a GBMI verdict (66%). Seventy-four percent of the attorneys have never received training in recognizing mental illness and 83 percent have never received education concerning mental health law. They also believe that their training in this area has been inadequate (85%).

Statistical Findings

When survey results were compared by gender, attorney type, attorney job experience, law school instruction about mental illness, experience working

Table 4 Experience With Defendants with Mental Illness and Mental Health Defenses by Occupation

Experience	Prosecutor ($N = 43$)	Public Defender ($N = 59$)	Private Defense Attorney ($N = 144$)	Judge ($N = 9$)	Total ($N = 255$)
More than 15 cases with defendants with mental illness	52	83	53	33	59
Has used the NGRI defense in a case	64	87	44	33	56
Has tried or pleaded a case with a GBMI verdict	64	80	51	17	59

Data are percentages of respondent groups.

Table 5 Correct Responses by Occupation, Regarding Mental Illness, Mental Illness Verdicts, and Dispositional Outcomes

Survey Item	Prosecutor ($N = 43$)	Public Defender ($N = 59$)	Private Defense Attorney ($N = 144$)	Judge ($N = 9$)	Total ($N = 255$)
Defined delusion	74	70	71	50	71
Defined psychosis	86	89	87	100	88
Identified schizophrenia as most severe mental illness	64	80	71	83	72
Identified legal definition of NGRI	83	74	74	99	76
Identified legal definition of GBMI	64	70	50	50	58
Identified dispositional outcome of NGRI	98	93	86	83	88
Identified dispositional outcome of GBMI	7	20	14	17	14
Identified that persons found GBMI could receive death sentence	52	78	56	5	59

Data are percentages of respondent groups.

with defendants with mental illness, and personal experience with mental illness, the following statistically significant results were found by Pearson's chi square analysis.

Gender Differences

Public defenders ($p = .002$) and prosecutors ($p = .001$) were more likely to be female than were private defense attorneys.

Women were 3.27 times more likely than men to self-report a history of mental illness (11.8%, women, 3.9%, men; $p = .028$) and were less likely to be married (58% women, 80% men, $p = .001$).

No gender differences were noted in survey responses, with the exception that men were more likely to state that they would never use an NGRI defense ($p = .048$).

Results According to Legal Occupation

Public defenders were 2.38 times more likely than private defense attorneys to know the definition of GBMI ($p = .01$).

Public defenders were 3.18 times more likely than prosecutors ($p = .009$) and 2.73 more likely than private defense attorneys ($p = .005$) to know that persons found GBMI could receive a death sentence.

Public defenders ($p = .00$), private defense attorneys ($p = .008$), and prosecutors ($p = .05$) were significantly more likely than judges to know that persons found GBMI could receive a death sentence.

Prosecutors were 5.1 times more likely than public defenders to have worked on fewer than six cases involving a mental health defense ($p = .016$). Private defense attorneys were 6.8 times more likely than public defenders to have worked on fewer than six cases involving a mental health question ($p = .000$).

Public defenders were 4.86 times more likely than prosecutors ($p = .01$) to state that NGRI acquittees should go to a hospital and then home when no longer dangerous. Private defense attorneys were also 3.12 times more likely than prosecutors ($p = .006$) to share this belief.

Public defenders were 3.2 times more likely than prosecutors to state that jurors should be informed of the dispositional outcome of the NGRI and GBMI verdicts before deliberations.

Prosecutors ($p = .000$) and judges ($p = .038$) were both 8 times more likely than public defenders to agree or be neutral about the elimination of the NGRI verdict.

Table 6 Attitudes About Defendants with Mental Illness and Mental Illness Verdicts

Opinion	Prosecutor ($N = 43$)	Public Defender ($N = 59$)	Private Defense Attorney ($N = 144$)	Judge ($N = 9$)	Total ($N = 255$)
Would rather defend, prosecute, or judge defendants who do not have mental illness	69	43	47	50	50
The NGRI verdict should be eliminated	50	11	18	50	23
The GBMI verdict should be eliminated	38	33	40	50	38

Data are percentages of respondent groups.

Attorney Experience on the Job

In all job categories, respondents with >10 years in their jobs were 3.14 times more likely to be able to define psychosis correctly ($p = .003$).

Respondents with >10 years in their jobs were 1.77 times more likely to be neutral or favor the elimination of the NGRI verdict ($p = .034$).

Law School Instruction

Law school instruction did not correlate with correct responses to questions about mental illness or mental illness verdicts.

However, those who reported adequate mental health training were 2.7 times more likely to identify schizophrenia as the most severe and chronic mental illness ($p = .046$).

Attorney Experience With Defendants Who Had Mental Illness

Attorneys with more than six cases involving defendants with mental illness were more likely to define psychosis correctly ($p = .011$), to recognize schizophrenia as the most severe and chronic mental illness ($p = .034$), to know NGRI ($p = .002$) and GBMI ($p = .03$) outcomes, and to know that defendants found GBMI could receive a death sentence ($p = .004$).

Attorneys with more than six cases involving defendants with mental illness were more likely to oppose eliminating the NGRI defense ($p = .014$) and were less opposed to working with defendants with mental illness ($p = .045$).

Personal Experience With Mental Illness

Personal experience of the participants with mental illness in themselves, family, friends, or acquaintances did not correlate significantly with any response.

Discussion

There are several limitations to this study. With a 52 percent response rate to the survey, selection bias may skew results, as attorneys more interested in or more knowledgeable about mental illness or mental health law may have disproportionately returned the survey. It is also impossible to know whether the occupational composition of the responders actually represents the current composition of the criminal bar. Given that only 17 percent of responders were prosecutors and 3 percent judges, those groups may be underrepresented in this sample. Also, this survey was brief and by no means comprehensive. Posing only three questions about psychotic mental illness was merely a screening of knowledge and is in no way a comprehensive assessment of the respondents' understanding. However, with longer surveys, response rates tend to decrease; therefore, this survey was kept as brief as possible in an attempt to obtain an adequate response rate.

Lawyers were fairly knowledgeable about the two common psychiatric terms, *psychosis* and *delusion*, and the severity of schizophrenia, most likely because the majority of them have had experience with a significant number of defendants with mental illness. Unfortunately, half of the respondents appear to prefer to represent a client who does not have mental illness. Thus, the stigma of mental illness may affect the degree of advocacy that defendants with mental illness receive from their attorneys, especially if the attorney is less experienced in working with clients with mental illness. It is clear that with increased experience in representing clients with mental illness, attorneys' attitudes toward this population become more positive. This finding has implications in the training of attorneys or law students to work with clients who have mental illness. Having practical hands-on experience in this area may be more beneficial than taking the standard didactic approach.

The respondents in this study appeared to be misinformed about the legal definition and dispositional outcome of the GBMI verdict. Unfortunately, this lack of knowledge may lead attorneys to misinform their defendants about dispositional outcome, and therefore defendants may base serious decisions about pleading on erroneous information. This possibility could partially explain results of an earlier study of the first 45 South Carolina GBMI inmates that showed that they had a considerable lack of understanding of the GBMI plea, what it meant for them, and its impact on their sentence.[14]

There is evidence that public defenders are more in favor of instructing jurors on dispositional outcomes of a verdict of mental illness than are prosecutors, perhaps because a GBMI verdict can sometimes represent a compromise when the defense is arguing NGRI (and thus hospitalization rather than prison) and the prosecution is arguing guilt.[18,19] Also, because they are not instructed on dispositional outcomes, many jurors may make decisions based on

erroneously perceived dispositional outcomes (i.e., an acquittee judged NGRI is released into the community, and a defendant with a verdict of GBMI is sent to a psychiatric hospital).[20] Finally, research has shown that jurors are confused by courts' instructions on insanity, and the addition of the GBMI option may exacerbate this problem.[21,22]

This study is limited to one state jurisdiction. However, the clear lack of knowledge about the GBMI verdict among members of the criminal bar in South Carolina may be applicable to other jurisdictions that use this verdict. Definitions of the GBMI verdict vary widely among state jurisdictions, and South Carolina is not the only state to have sentenced an individual who was found GBMI to death.[23] For example, before abolishing the death penalty in 2011, Illinois sentenced a defendant to death after a GBMI plea.[24] Attorneys in states with both a death penalty and GBMI verdict should be aware of the legal standard for GBMI as well as the possibility of a death sentence with this plea. In addition, South Carolina is a traditionally conservative state. Attitudes about defendants with mental illness and verdicts of mental illness may be more progressive in other jurisdictions.

In this study, public defenders appeared to be more knowledgeable about mental illness and mental health defenses than private attorneys, prosecutors, and judges. Their familiarity with mental illness is attributable to the likelihood that public defenders encounter the largest proportion of defendants with mental illness. The downward socioeconomic drift in major mental illness precludes most defendants with severe mental illness from being in a position to afford private legal counsel. It also appears from the data that public defenders learn by doing. As they become more experienced with defendants with mental illness, they become more knowledgeable, they view the insanity defense more favorably, and they are more willing to represent them.

From the results of this study, it appears that lawyers are unlikely to receive instruction about mental illness or mental health law during law school. They also indicated that their education in these areas was inadequate. With the large number of persons with mental illness being adjudicated in the criminal courts, law school curricula and continuing legal education providers should consider offering more training to members of the criminal bar on mental illness and mental health law. Forensic psychiatrists, by virtue of their training and experience, may be in an ideal position to assist with such training.

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