

# Criminal Defendants Who Desire Punishment

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**Some defendants desire to be punished. Sometimes psychotic motivations underlie punishment-seeking behavior; sometimes they do not. The defendant's clinical status is relevant to his competency to stand trial and to waive other rights. These issues are illustrated by presentation of a case of a defendant who sought punishment. The importance of psychiatric assessments of these defendants is emphasized.**

The American legal system is fundamentally adversarial. In criminal proceedings, for example, the state attempts to prove guilt and defendants generally seek to avoid punishment either by acquittal or by obtaining lesser sentences. Nevertheless, some defendants desire to be punished. They may respond to the criminal process in ways that do not otherwise serve their best interests. Under these circumstances, courts may seek mental health consultation to clarify the defendants' self-destructive motivation. Specific concerns can include questions of trial related competency, criminal responsibility, or sentencing considerations. Resolution of the legal questions may hinge upon a mental health professional's assessment of the etiology of a defendant's behavior. This paper will present the case of a defendant who sought punishment. Potential etiologies for such a presentation and relevance of the psychological assessment to the forensic question will also be addressed.

## Case History

Mr. A. is a 42-year-old, single man who was convicted of a dwelling-house

arson. Before his arrest, he had a 10-year history of paranoid delusions resulting in three psychiatric hospitalizations. He terminated psychiatric treatment five years before the incident of arson, and he became increasingly suspicious and reclusive. He believed that the United States had been "taken over" by the Russians; that "everybody," including his family, was part of this conspiracy; that his thoughts were being controlled by other people; and that television cameras were hidden in his apartment to monitor his activity. He locked himself in his apartment, refusing to answer the phone or to respond to knocks at the door, and he ventured outside only to replenish his groceries. Believing that he was "already under arrest," he concluded that he "may as well set the fire and get arrested [openly]." The delusion that his activities were being monitored convinced him that "no one would get hurt" because the "the firemen would be there in a minute to put [the fire] out." He also immediately informed the building superintendent of his actions. The fire was controlled without injuries.

After his arrest, Mr. A. refused to accept the services of an attorney. Although he believed that any defense attorney assigned to his case would be part of the conspiracy against him, he informed no one of this suspicion or of his other delusional beliefs. Instead, he told the court that he was guilty, and he requested punishment. Under the provisions of Massachusetts law, a 20-day inpatient evaluation of competence to stand trial and criminal responsibility was obtained. A one page, typed report stated that Mr. A. had a "desire to be punished" for reasons that were "unclear." Nevertheless, his "masochism" was attributed to "personality characteristics" rather than "mental illness." The report suggested that Mr. A. was both competent to stand trial and "responsible at the time of the alleged offense." The court found Mr. A. to be competent to stand trial and it accepted his guilty plea. The court opined, however, that Mr. A.'s "conduct [was] far from normal," and he was returned to the hospital for a 30-day aid to sentencing evaluation. The evaluator made the "provisional diagnosis of a masochistic personality disorder" and concluded that "before he could get a productive result from psychotherapy he would have to be punished sufficiently to satisfy . . . the demands of his punitive superego." The report went on to recommend "punishment . . . for this crime" as part of his therapy.

At the sentencing hearing, Mr. A. continued to request criminal punishment and to refuse the services of an attorney. He was sentenced to the maximum term

of incarceration for arson, 20 years in state prison. Ten months after his incarceration, Mr. A. expressed the desire to die and began to refuse food, monitoring, and medical procedures. The prison psychiatrist noted Mr. A. to be "isolated . . . paranoid . . . irrational and bizarre," and he was transferred to the state hospital for treatment. Although he had paranoid and nihilistic delusions and episodes of catatonic behavior, Mr. A. was not given antipsychotic medications because of his consistent refusal to take them. Fourteen months after his admission, forensic consultation by this author recommended petitioning for a judicial determination that Mr. A. was incompetent to refuse antipsychotic medications. Four months later, Mr. A. was adjudicated incompetent, and the court approved a substituted judgment antipsychotic treatment plan in accord with the Massachusetts Supreme Judicial Court's *Rogers* decision.<sup>1</sup> During the first two months of treatment with antipsychotic medication, Mr. A. displayed gradual, but significant, improvement. His delusional thinking and social isolation resolved. He developed insight into the nature of his mental illness, he willingly took his medication, and he expressed the desire to be paroled and to regain his freedom. Mr. A. received his parole three months after beginning treatment with antipsychotic medication, and he was transitioned back to the community over the following six months.

### Legal Issues

Mr. A.'s case illustrates many of the problems that arise when a criminal de-

fendant desires punishment. Although the court held a hearing on his competence to stand trial, Mr. A. waived a number of constitutional rights by pleading guilty and proceeding *pro se*. A guilty plea involves the waiver of the Fifth Amendment right against compulsory self-incrimination and the Sixth Amendment rights to trial by jury and to confrontation of witnesses.<sup>2</sup> Proceeding *pro se* involves waiver of the right to assigned counsel.<sup>3</sup> Defendants may, however, waive the right to an attorney<sup>4</sup> and they may plead guilty for reasons other than actual guilt.<sup>5</sup> Nevertheless, courts may hold the standard of competence to waive these constitutional rights to be distinct from the test for competence to stand trial.<sup>6</sup> In addition, some decisions suggest that an insanity defense may be involuntarily imposed upon a defendant by a court.<sup>7</sup> Factors that a court may consider in deciding whether to impose the defense include "the quality of the evidence supporting the insanity defense; the defendant's wish in the matter; the quality of defendant's decision not to raise the defense; the reasonableness of defendant's motives in opposing presentation of the defense; and the court's personal observations of the defendant throughout the course of the proceedings against him."<sup>8</sup> Most jurisdictions also recognize a right of allocution, i.e., to speak on one's own behalf prior to the imposition of sentence.<sup>9</sup> In many of these jurisdictions, statutes or case law prevent sentencing of incompetent defendants.<sup>10</sup>

### **Clinical Assessment of Defendants Who Desire Punishment**

A defendant's desire for criminal punishment can be rooted in psychotic or nonpsychotic motivations. The former might include paranoid delusions or depression, and the latter might include masochistic personality traits, political motivations, or a conscious wish for atonement. There are still other reasons why some defendants might appear to desire punishment. This might occur, for example, when conviction is inevitable or when mental retardation impairs a defendant's understanding of the legal issues. Judicial determinations of incompetency are more likely when a defendant is psychotic or mentally retarded. It is probably true that defendants who appear to seek punishment as a result of political motivations, desire for atonement, or accepting the inevitability of conviction are less likely to be adjudicated incompetent. The influence of masochistic personality traits on competency determinations is less certain. Each of these potential motivations for a desire for criminal punishment will be examined.

***Paranoid Delusions*** Delusional thinking can cause a defendant to make self-destructive choices. Some paranoid patients, for example, attempt to use the trial process to expose their conspiracy theories. In so doing, they may refuse insanity pleas or other available defense strategies, and they may behave in a way that increases the likelihood of conviction.<sup>11</sup> A request for criminal punishment might also arise from the belief

that the legal proceedings are a pretense for a predetermined outcome, as in the case of Mr. A. Rather than play along with the presumed charade, the defendant could angrily ask that the inevitable sanction be imposed without delay. The underlying psychosis can often be hidden. Some schizophrenic patients, for example, are able to cover-up their psychopathology when they wish to appear to be healthy.<sup>12,13</sup> In addition, patients can become adept at manipulating others in pursuit of their practical needs.<sup>14</sup> When confronted with adaptive, but antisocial, behavior, mental health professionals might miss an underlying psychotic disorder. The forensic context increases the risk of attributing a defendant's behavior to an antisocial personality disorder.<sup>15</sup>

**Depression** Depression can significantly impair a defendant's functioning in the criminal process. The self-absorption and withdrawal from the environment that often accompany depression can lead to a lack of concern with the outcome of the criminal proceedings. The concern that does exist might be overwhelmed by a sense of hopelessness. Anergy and loss of motivation also could impede efforts to mount a defense. Finally, a depressed patient with delusional guilt might believe himself to be worthy of punishment. As a result, the defendant may seek out sanctions by the court, convinced that the penalty is deserved.<sup>9</sup>

**Mental Retardation** The mentally retarded defendant poses unique challenges for the criminal justice system. Some commentators express concern

about the paucity of pretrial competency evaluations of mentally retarded defendants, who end up comprising an estimated 10 to 25 percent of all prisoners.<sup>10</sup> Attorneys often are unaware of their clients' retardation, and this might account for the infrequency with which the issue is raised.<sup>16</sup> The likelihood that untrained observers will be unaware of a person's mental insufficiency is increased by the practiced ability of many of the mentally retarded to wear a "cloak of competence" and pass as normal.<sup>17</sup> The wish to avoid the stigma of mental retardation provides a powerful motivation for these defendants to hide their disability. Attempts to cover ignorance account, in part, for the tendency toward acquiescence of mentally retarded persons. They are likely to respond affirmatively when a question is not understood or when the correct answer is not known.<sup>18</sup> In addition, they tend to give the answer that they believe will meet with the approval of authority figures. This desire to please authority figures renders them vulnerable to suggestion, whether intentional or unintentional.<sup>19</sup> One court recognized that the "exaggerated suggestibility and need to cooperate [of the mentally retarded] . . . frequently goes undetected" and may impair a defendant's competence to waive constitutional rights in criminal proceedings.<sup>20</sup> Another court considered the effect of the "suggestibility" of "a defendant of subnormal intelligence" upon the voluntary nature of a confession to murder with aggravating factors. In part because the defendant was "isolated from all but his interrogators [and] . . . the subject of

continuing purposeful and suggestive interrogation," the court held that the confession was involuntary.<sup>21</sup> A final, and perhaps even more disturbing, problem with mentally retarded defendants is the risk that they will believe themselves to be guilty even when they are innocent. This can occur because of distorted concepts of blameworthiness or causation that lead them to feel responsible for accidents or for failing to prevent crimes committed by other persons.<sup>19</sup>

***Masochistic Personality Traits*** The psychoanalytic concept of the masochistic personality includes, among other things, the need to fail and the desire for punishment to expiate guilt from unacceptable impulses.<sup>22</sup> Individuals with these traits might, consciously or unconsciously, undermine their defenses on criminal charges. Although such behavior is likely to fall short of outright confessions of guilt or requests for punishment, more subtle self-defeating acts can occur. This might include, for example, failure to present exculpatory information or poor cooperation with the defense attorney. In some cases, however, apparent masochistic personality traits can be secondary to a masked depression.<sup>23</sup> Differentiating between these two etiologies can be difficult.

***Political Motivations*** Political offenders differ from other criminals in their altruistic motivations for their acts. They seek social change, rather than personal profit. Their "good" motives, however, are not exculpatory under our criminal law.<sup>24</sup> Nevertheless, despite the potentially damaging consequences,

they may attempt to use the trial process as a forum for expressing their views. Viable defenses, including not guilty by reason of insanity pleas, may be rejected, and some political offenders may decline to cooperate with, or even disrupt, court proceedings.<sup>25</sup> Although only a few might actually desire punishment and martyrdom for their causes, their behavior in effect increases the likelihood of criminal sanctions.

***Atonement*** In some cases, criminal offenders might desire punishment to expiate their guilt. In part because of the belief that their punishment is "deserved," they might mount perfunctory defenses, or even seek out penalties for their acts.<sup>26</sup> This wish for atonement by an otherwise rational offender must be distinguished from efforts to do penance for imagined wrongs, as might be seen with depressed or mentally retarded defendants.

***Embracing the Inevitable*** Finally, some defendants who are caught "red-handed" in the commission of a crime may simply accept the inevitability of punishment. This acceptance, however, is not due to a desire for atonement arising from a sense of moral blameworthiness. Instead, the defendant, who often has a personality disorder, assumes no responsibility for his acts and believes himself to be the victim. He might present as angry toward an unjust system that has allegedly prejudged his guilt. In effect, the defendant is saying, "you're going to punish me no matter what I do, so why should I bother trying to defend myself." Despite appearances, this defendant does not desire punishment.

As the preceding discussion illustrates, criminal defendants might seek punishment for many reasons. In some cases, their behavior is influenced by psychoses, affective disorders, or cognitive impairments; in other cases their motives are more rational. A defendant's stated desire for punishment should not be accepted at face value. Careful clinical assessment by the forensic mental health professional is necessary to clarify the underlying motivation. Forensic evaluators also need to monitor themselves for negative countertransference reactions.<sup>14</sup> These reactions might lead clinicians to recommend that a defendant's request for punishment be granted, as in the case of Mr. A. Although some commentators advocate punishment as treatment in rare circumstances,<sup>27</sup> other commentators argue against recommendations for disposition or punishment in psychiatric presentencing reports.<sup>28,29</sup> The American Psychiatric Association Task Force on the Role of Psychiatry in the Sentencing Process also discouraged practitioners from making dispositional recommendations.<sup>30</sup> In part, this stance is bolstered by evidence that courts are likely to follow psychiatric recommendations for punishment but ignore suggestions for leniency.<sup>31</sup>

### Conclusion

Some criminal defendants present with an apparent desire for punishment. Instead of attempting to defend themselves, these individuals actively seek conviction, or at least behave in a fashion that increases the likelihood of conviction. Both psychotic and nonpsy-

chotic motivations can underlie this behavior. If self-destructive statements are taken at face value, significant impairments, due to mental illness or mental retardation, relevant to defendants' incompetence to stand trial might be missed. Courts and forensic mental health evaluators also need to assess the capacities of these punishment-seeking defendants to waive rights not usually considered in routine competence to stand trial examinations. By clarifying the clinical reasons for a defendant's desire for punishment, the forensic evaluator assists the court in adjudicating the defendant's competence to waive these rights, as well as his competence to stand trial.

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