

In the Aftermath of *State v. Becker*: A Review of State and Federal Jury Instructions on Insanity Acquittal Disposition

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An important topic related to the insanity defense is what jurors should be told about the disposition of a defendant found not guilty by reason of insanity (NGRI). In the federal court system, jurors are not instructed about the consequences of an NGRI verdict. State courts, however, are divided on the question. The federal precedent, *Shannon v. United States*, and the most recent state case to rule on NGRI juror instructions, *State v. Becker*, are reviewed in detail. What follows is the author's critique of the principal arguments for and against a jury instruction on NGRI disposition. The author argues in favor of a jury instruction on the consequences of an NGRI verdict.

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American law has long distinguished between individuals who are criminally convicted and those found not guilty by reason of insanity (NGRI). Individuals found NGRI are not held legally responsible for their crimes. In the United States, two primary standards govern defendants seeking the insanity defense: the *M'Naughten* test¹ and the American Law Institute Test.² To meet the requirements of both tests, the individual must have a mental disease or defect, the illness must impair psychological functioning, and the impairment must affect the individual's understanding or behavior.

Jurors generally know that persons found guilty of a crime are punished and persons found not guilty are set free. Although jurors may not be aware of sentencing guidelines applied to a particular defendant, they generally have a basic understanding about the range of criminal punishments afforded to persons found guilty of a crime and understand that most convicted defendants serve time in jail or prison. Less obvious to them is what happens to de-

fendants who are NGRI. Because of uncertainty about NGRI disposition, they may have genuine concerns that a criminally insane defendant would be set free after an NGRI verdict.

In regard to the insanity defense, there is a split among courts as to whether the jury should be instructed on the consequences of an NGRI verdict. Historically, juries have decided on guilt without knowledge of the consequences to the defendant. In 1994, the United States Supreme Court ruled on the matter, on which the federal circuit courts had been divided. In *Shannon v. United States*,³ the Court held that instructing the jury in federal cases on the consequences of an NGRI verdict is improper pursuant to the Insanity Defense Reform Act of 1984.⁴ State courts, however, remain in disagreement on the question.

A recent case, *State v. Becker*,⁵ again brought to the forefront the matter of jury instructions in state cases. In *Becker*, the jury specifically asked the court for clarification as to the consequences of an insanity acquittal. Citing *Shannon*, the *Becker* court held that due process does not require an instruction as to the consequences of an NGRI verdict. In its ruling, the Supreme Court of Iowa emphasized the difference between the role of the jury and that of the judge—that judges are responsible for applying the law and

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imposing sentences, not the jury. However, other state courts have held, at least as a matter of policy, that a jury instruction on the disposition of an insanity acquittee is necessary to prevent juror confusion. Some states allow for such an instruction under limited circumstances.

In light of *Becker*, this article is an examination of the current status of jury instructions on the consequences of an NGRI verdict among the states. It is a review of the history of the jury role and federal legislation in the United States on the insanity defense as a backdrop for the federal case of *Shannon v. United States*. The article reviews the most recent state case on NGRI jury instructions, *State v. Becker*. I then critique the main arguments for and against a jury instruction on NGRI disposition. I argue in favor of a jury instruction on the consequences of an NGRI verdict to avoid having jurors decide verdicts based on mistaken perceptions.

Historic Role of the Jury in United States Law

Understanding the role of the American jury is important in the debate regarding jury instructions in insanity cases. Historically, the United States took its notion of the jury from Great Britain. In drafting the U.S. Constitution, the Framers recognized the importance of the jury by extending rights to a jury trial in both criminal and civil legal cases. The Sixth Amendment guarantees all criminal defendants the right to a trial “by an impartial jury of the state and district wherein the crime shall have been committed”⁶; the Seventh Amendment extends the right to a jury trial to certain civil cases.⁷

When the U.S. Constitution was first drafted, the specific roles of the judge and jury were not well defined. Gradually, however, courts became the arbiters of law and juries inherited the fact-finding role. What developed was:

[a] basic division of labor in our legal system between judge and jury. The jury’s function is to find the facts and to decide whether, on those facts, the defendant is guilty of the crime charged. The judge, by contrast, imposes a sentence on the defendant after the jury has arrived at a guilty verdict [Ref. 3, p 2424].

This division of labor between the judge and the jury endures today. According to the split roles, the legal consequence of a particular verdict is a question of law to be decided by the judge.⁸

The Insanity Defense Reform Act of 1984

Before the enactment of the Insanity Defense Reform Act (the Act), a federal defendant raising the insanity defense was required to demonstrate a reasonable doubt as to his sanity at the time of the offense. Upon such a showing, the burden switched to the government to prove sanity at the time of the act beyond a reasonable doubt. Federal defendants who were successful with their insanity defense were simply found not guilty in federal court.⁹ There was no formal federal procedure for commitment of a defendant found NGRI. Instead, commitment of persons found NGRI occurred through separate state civil commitment procedures (Ref. 9, p 753, citing legislative history of the Act). Under the pre-Act scheme, there was no guarantee that a defendant would be committed as a result of the state civil commitment proceedings.

In 1984, the Act was passed in the aftermath of public outrage after John Hinckley successfully used the insanity defense at his trial for the attempted assassination of President Ronald Reagan. Hinckley had shot and wounded President Reagan, White House Press Secretary James Brady, District of Columbia police officer Thomas Delahanty, and Secret Service Agent Timothy McCarthy. At trial, he presented the insanity defense and was acquitted of all charges brought against him.¹⁰

Before the Act, 11 federal circuits used the Model Penal Code for insanity.² The Act changed the federal standard for insanity in several ways. The Act changed the federal standard for insanity to a *M’Naughten*-like test: “It is an affirmative defense to a prosecution under any federal statute that at time of the commission of the acts . . . the defendant, as a result of severe mental disease or defect, was unable to appreciate the nature and quality or wrongfulness of his acts”.⁴ The Act also shifted the burden of persuasion from the prosecution; it required the defendant to prove insanity by clear and convincing evidence. Further, the Act established a federal procedure for commitment of federal defendants found NGRI (Ref. 4; see also Ref. 8, p 1066).

Federal Standard for Jury Instruction: *Shannon v. United States*

Before *Shannon*, there was a split among the federal circuits as to whether juries should be instructed on the consequences of an insanity verdict after pas-

sage of the Act. Provided here is a summary of the *Shannon* decision.

In August 1990, Terry Lee Shannon, a convicted felon, was stopped by a police officer in Tupelo, Mississippi. When the police officer asked Mr. Shannon to accompany him to the station house, Mr. Shannon announced that “he didn’t want to live anymore” (Ref. 3, p 2423). He walked across the street, pulled out a pistol, and shot himself in the chest. Mr. Shannon survived his suicide attempt, and he was subsequently indicted for possession of a firearm by a felon.

At his trial, Mr. Shannon raised the insanity defense and motioned the court to instruct the jury about the consequences of an NGRI acquittal. He asked for an instruction that stated that, if successful with his NGRI defense, the court would commit him to a state hospital until such time as he is without substantial risk to others. The trial court denied Mr. Shannon’s request and directed the jury “to apply the law as instructed regardless of the consequence” (Ref. 3, p 2423). The jury returned a guilty verdict.

On appeal, the Court of Appeals for the Fifth Circuit affirmed. This was a case of first impression for the Fifth Circuit after passage of the Insanity Defense Reform Act of 1984. The Fifth Circuit held that the Insanity Defense Reform Act did not change the previously established law in the circuit that such an instruction would not be given. This contrasted with some other federal courts that followed *Lyles v. United States*,¹¹ a District of Columbia Circuit Court decision which held that the judge shall issue an instruction on the consequences of an NGRI verdict when the insanity defense is raised, but should be withheld upon the request of the defendant.

The U.S. Supreme Court granted *certiorari* to consider whether Mr. Shannon should be afforded a new trial with a jury instruction about the consequences of an NGRI verdict. In affirming the Fifth Circuit, the U.S. Supreme Court held that judges generally should not instruct the jury about the disposition of defendants after an NGRI verdict. Writing for the majority, Justice Thomas wrote that neither the Insanity Defense Reform Act nor general criminal procedure necessitates an instruction on consequences of NGRI verdicts.

Majority

The majority reasoned that there is a separation between the guilt and sentencing phases of a trial.

The jury determines the guilt or innocence of a defendant; the judge imposes a sentence. Giving jurors sentencing information, wrote the majority, would confuse jurors by giving them information that would distract them from their role as fact-finders and is irrelevant to their role.

The Court also looked at the language and intent of the Insanity Defense Reform Act. The Act does not explicitly provide guidance within the plain language of the law. Finding no express statutory language, the Court looked at whether Congress, in enacting the law, intended to adopt the District of Columbia’s holding in *Lyles*. The Court reasoned that *Lyles* did not apply because the D.C. Code, upon which *Lyles* was based, differed significantly from the Act, such that it could not be said that the Act was modeled after the D.C. Code. The Court stated that any mention of *Lyles* in the legislative history of the Act that was not directly contained in the text of the Act was insufficient to conclude that Congress intended for *Lyles* to apply.

In response to Mr. Shannon’s argument that jurors may falsely believe that NGRI acquittees are immediately set free, the Court looked to whether general federal criminal practice required a jury instruction. Justice Thomas said that it was doubtful that jurors would have a mistaken belief about the outcome of an insanity verdict because “highly publicized cases . . . dramatized the possibility of civil commitment following [an NGRI] verdict” (Ref. 3, p 2427, n 10).

The Court also pointed out that the consequence of an NGRI verdict is not always hospitalization. In the federal system, a person found NGRI has a hearing within 40 days of the verdict to determine whether he should be civilly committed. Accordingly, wrote the majority, an instruction on acquittal consequences could have the opposite effect (that is, encourage jurors to render a guilty verdict) to prevent release of defendants “after forty days or less” (Ref. 3, pp 2427–8).

Finally, the Court questioned that, were instructions regarding the consequences of NGRI acquittals necessary, how could the Court limit instructions on any number of other principles that jurors may find unfamiliar? The Court did not want to start down a slippery slope that would require instructions on such things as possible sentence lengths or sentence ranges for lesser included offenses. That being said, the Court noted that there may be rare instances

where an instruction on the consequences of an NGRI verdict is necessary to prevent misunderstanding, such as when the prosecutor states that the defendant will be set free upon a verdict of NGRI.

Dissent

Writing for the dissent, Justice Stevens advocated that a jury instruction should be given when requested by the defendant. Justice Stevens objected to the majority's treatment of *Lyles* as not adopted by the Federal Insanity Reform Act. The position articulated in *Lyles* had "minimized the risk of injustice for nearly forty years" (Ref. 3, p 2428). The dissent also criticized the majority's position that, by informing jurors of the consequences of an NGRI verdict, the Court would be opening the door for instructions on a myriad of consequences. The District of Columbia had followed the *Lyles* precedent for 40 years without the problems of the slippery slope that the majority asserted.

The dissent maintained that the instruction could help jurors focus on the question of guilt, because they would be free of the fear of the practical effect of an NGRI verdict. Our knowledge about the outcome of the insanity defense does not compare with their knowledge following guilt or innocence: "[a]s long as significant numbers of potential jurors believe that an insanity acquittee will be released at once, the instruction serves a critical purpose" (Ref. 3, p 2431).

State Case: *State v. Becker*

The Supreme Court of Iowa is the most recent state court to rule on the question of jury instructions on the consequences of an insanity verdict.

In 2009, Mark Becker shot and killed his former football coach, Edward Thomas, in a high school weight room. He was charged with first-degree murder and relied on the insanity defense. At trial, experts testified that he had paranoid schizophrenia. He motioned that the jury be instructed that, if he were found NGRI, he would be "immediately ordered committed to a state mental health institute or other appropriate facility for a complete psychiatric evaluation" (Ref. 5, p 23). The court refused Mr. Becker's instruction and, instead, gave Instruction Number 10: "Duty of Jury. The duty of the Jury is to determine if the Defendant is guilty or not guilty. In the event of a guilty verdict, you have nothing to do with punishment" (Ref. 5, p 23).

The jury deliberated for several days and sent several questions to the district court. One question read as follows: "What would happen to Mark Becker if we find him insane?" (Ref. 5, p 23) The court met with the attorneys and proposed the following response:

You need not concern yourself with the potential consequences of a verdict of not guilty by reason of insanity. Please refer to Instruction Number 10. You must decide whether he is guilty or not guilty, and, if you decide he is guilty, you must then decide the issue of insanity. In the event of a guilty verdict or verdict of not guilty by reason of insanity, you have nothing to do with the consequences. Those are for the Court, not for the jury [Ref. 5, pp 23–24].

Mr. Becker's counsel did not renew its request for an instruction as to consequences of an NGRI verdict. The jury found Mr. Becker guilty of murder in the first degree, rejecting the insanity defense. Among other issues, Mr. Becker appealed the decision on his requested jury instruction.

At the Iowa Court of Appeals, Mr. Becker contended that the instruction was required by due process and the right to a fair trial guaranteed by the Iowa Constitution.¹² He pointed to Justice Steven's dissent in the *Shannon* case. The appellate court responded:

Justice Steven's dissent has appeal, particularly here where[:] the jury asked the specific question after lengthy deliberations, the focal issue in the case was whether or not Becker proved his insanity defense, and there was substantial evidence which, if believed, would support a finding that Becker was not guilty by reason of insanity [Ref. 12, p 185].

The court held, however, that previous case law in the state (that an instruction is generally inappropriate and unnecessary) was controlling.

The Iowa Supreme Court affirmed the decision solely on due process grounds. The court first addressed whether due process requires a trial court to give a consequence instruction whenever the defendant requests one. In its analysis, the court determined that there was no historical basis for the instruction. It concluded that the Iowa decisions are in line with federal treatment of the issue as articulated in *Shannon*. The court specifically commented that it had previously declined to adopt *Lyles* because such information is irrelevant to the jury's role, and it could invite a compromised verdict. The legislature had adopted Iowa Rule of Criminal Procedure 2.22,⁸ which specifically articulated that the disposition of an insanity acquittee is a matter for the court, not the jury.¹³

In its analysis, the court next considered whether there is a contemporary consensus as to whether such an instruction is required. The court recognized that more than 20 states provide jurors with information on the outcome of a verdict of insanity, but noted that states provide such instructions under various circumstances, such as to correct inaccuracies told to the jury. Mr. Becker did not argue that this occurred in his case. Additionally, although there may be policy considerations relevant to the issue, stated the court, “we are not required to determine whether the general practice of not giving the instruction is the *best* policy; we need only be assured that failure to give the instruction is not constitutionally infirm” (Ref. 5, p 45; emphasis in original).

Finally, the court examined, based on the specific facts of Mr. Becker’s case, whether an instruction was required by due process. In this final analysis, the court employed a totality-of-the-circumstances approach. The court rejected Mr. Becker’s argument because there was no evidence that the jurors in his case convicted him on the basis of their beliefs about the insanity defense. Also, according to the court, Mr. Becker’s proposed instruction did not accurately describe the possible consequences of an insanity verdict and would not have eliminated unnecessary speculation by the jury. Consequently, the Supreme Court of Iowa held that the trial court did not err in refusing Mr. Becker’s proposed instruction.

Discussion

Despite federal clarity on the matter, state courts remain divided on whether jury instructions should include the consequences of an NGRI verdict. States that find it inappropriate to give an instruction on the disposition of an NGRI verdict generally place their weight on the jury’s fact-finding function, as distinguished from sentencing. In contrast, other states place importance on providing the jury with accurate information.

More than 20 state jurisdictions have held that the jury should be instructed as to the consequences of an insanity verdict, or that an instruction is permitted upon the request of the defendant.¹⁴ The following are examples of model jury instructions from West Virginia and Florida:

If you return a verdict of “not guilty by reason of insanity,” the law provides that the Court shall determine on the record the offense of which the defendant otherwise would have been convicted, and the maximum sentence he or she

could have received. The law further provides the Court shall commit the defendant to a mental health facility under the jurisdiction of the Department of Health, with the Court retaining jurisdiction over the defendant for the maximum sentence period. If the defendant is released from an inpatient mental health facility while under the jurisdiction of the Court, the Court may impose such conditions as are necessary to protect the safety of the public [Ref. 15; West Virginia].

If your verdict is that the defendant is not guilty by reason of insanity, that does not necessarily mean he/she will be released from custody. I must conduct further proceedings to determine if the defendant should be committed to a mental hospital, or given other outpatient treatment or released [Ref. 16; Florida].

As stated earlier, the *Shannon* Court held that federal district courts should not, absent necessity when misinformation has been provided to the jury, instruct the jury on NGRI disposition. The decision in *Shannon*, however, included a strong dissent by Justices Stevens and Blackmun. The arguments put forth by both the majority and minority have been repeated in subsequent state court analyses on the topic. Critiqued here are the major arguments that have been announced by the courts. With the major arguments as a backdrop, the author argues that an instruction should be given.

Problems with Arguments for No Instruction

Separation of Powers

In states that hold that an instruction on consequences of NGRI acquittals is generally inappropriate or irrelevant, the courts typically follow the reasoning in *Shannon* as exemplified by the recent case of *Becker*. These courts point to the division of power between the judge and jury. As the *Shannon* court articulated, “The principle that juries are not to consider the consequences of their verdict is a reflection of the basic division of labor in our legal system between judge and jury” (Ref. 3, p 2424). Juries need not be aware of the consequences of the verdict, stated the majority in *Shannon*, because the consequences of the verdict are irrelevant to their task and “not within their province” (Ref. 3, p 2424).

However, some commentators have argued that the Court’s reasoning reflects the Court’s protective attitude toward its exclusive domain over issues of law.¹⁷ It has been said that the *Shannon* Court was “motivated by more than institutional faith in the Court’s superior competence to resolve legal questions” and is “an example of judicial sanction of systemic dispossession of the jury’s power” (Ref. 17, p

671). It has also been said the Court's reliance on the separation of powers doctrine was circular: "the rule is sound because it has long been adhered to, and it should be adhered to, because it is sound and well established" (Ref. 17, p 669).

Slippery Slope

An alternative ground for courts to reject an instruction on consequences of an NGRI verdict is that, if such instruction were allowed, it would open the door for jury instructions on all postverdict dispositional matters. For example, courts have considered whether punishment evidence should be provided to the jury. In a relatively recent case, the Eastern District of New York held that a criminal defendant had a Sixth Amendment right to inform the jury of the mandatory minimum sentence he faced for downloading child pornography.¹⁸ On appeal, the Second Circuit reversed by simply reiterating the general prohibition against instructing the jury about postverdict information in American courts.¹⁹ There is concern, thus, that if the court allowed instructions on NGRI disposition, it would create a slippery slope, such that there would be no way to limit instructions on the legal consequences of a verdict.

As the dissent in *Shannon* pointed out, however, the District of Columbia followed the *Lyles* precedent for 40 years without any slippery-slope problems.

Information Through the Media

In *Shannon*, Justice Thomas said that it is unlikely that jurors would be mistaken about the disposition after an insanity verdict because "highly publicized cases . . . dramatized the possibility of civil commitment following [an NGRI] verdict" (Ref. 3, p 2427, n 10). According to this argument, courts can rely on the sufficiency of the news media to educate the public on the topic of insanity.

However, there are two flaws in this argument. First, there are questions about the accuracy of the media's portrayal of the insanity defense. One author critiqued this argument as follows:

[T]he media "dramatization" of cases involving the insanity defense seldom address their legal aspects in sufficient detail or with sufficient accuracy. Individuals that had at some point watched a televised trial where the insanity defense was raised, or gained their understanding of the consequences of the insanity defense from some popular television series, probably have a limited and somewhat

skewed understanding about the probability, nature, and length of confinement of the insane [Ref. 17, p 678].

Second, it should be the role of the judiciary, not the media, to educate the jury about relevant legal issues. The judiciary, not the media, has the responsibility of ensuring a fair judicial process. The judiciary is in the best position to provide reliable information and limit misconceptions on the topic.

Too Complicated

Opponents of giving an instruction have also put forth the idea that it is too complicated, in many jurisdictions, to provide the jury with accurate disposition information. This argument has the most merit in jurisdictions where a defendant found NGRI is not immediately committed to a mental hospital, but instead will undergo an alternative procedure to determine his disposition. By way of illustration, in *People v. Goad*, the Michigan Supreme Court stated that it was too complicated to give a disposition instruction for NGRI acquittees because its basic insanity statute referred, in its text, to nine additional statutes and that all of the statutes must be considered together to fully understand their meaning.²⁰ This argument, that the instruction would be too difficult to draft when more than one disposition is possible, could be solved, however, by a general instruction, such as the model Florida instruction shown earlier. At minimum, an instruction could dispel the general idea that an insanity acquittee would be immediately set free.

It is interesting to note that there is a correlation between states that give an instruction and their post-NGRI commitment schemes. Automatic commitment means that when a jury returns a verdict of NGRI, the defendant is automatically committed to a state psychiatric facility. States with automatic post-NGRI verdict commitment are more likely to give an instruction on NGRI disposition (Ref. 21, p 610).

Arguments for a Jury Instruction

Harm From Misinformation

Many in the public regard the insanity defense as a loophole or a means of avoiding punishment after committing a criminal offense. One article reports that the general public has the impression that the insanity defense is used in 20 to 50 percent of all criminal cases.²² Despite this popular perception, empirical evidence reveals that the insanity defense is

infrequently used and is seldom successful. Studies have demonstrated that roughly one percent of felony defendants plead the insanity defense²³ and that the defense is successful in approximately one quarter of those cases.^{24,25}

The *Lyles* court reasoned that, while it is generally known that a verdict of not guilty means that the defendant goes free and that a verdict of guilty means that he is subject to punishment imposed by the court, a verdict of NGRI has no such general understanding. Proponents of an NGRI instruction argue that because jurors have common knowledge about the outcomes of the other verdicts, they should similarly know the outcome of an NGRI verdict.

Proponents of the instruction also assert that, while jurors are not asked to consider the consequence of their verdict, it is likely that they do consider the outcome in determining whether someone should be found NGRI. Following this logic, there is risk that misinformed jurors might find the defendant guilty to avoid the release of a dangerous individual into society (see, for example, Ref. 26). As mentioned, it is likely that some jurors obtain information about the insanity defense through the media, which may be unreliable. The judiciary is in the best position to educate jurors properly on the consequences of an NGRI verdict in their jurisdiction.

No Harm From Instruction

Justice Stevens wrote in the *Shannon* dissent, “even if, as the Court seems prepared to assume, all jurors are already knowledgeable about the issues, surely telling them what they already know can do no harm” (Ref. 3, p 592). Proponents of the instruction have pointed out that, on the one hand, such an instruction could be useful to prevent misinformation or juror confusion. On the other hand, little harm could come from merely restating to jurors what they already know.

The American Bar Association (ABA) has weighed in on the issue in its Criminal Justice Mental Health Standards: “The court should instruct the jury as to the dispositional consequences of a verdict of not guilty by reason of mental non-responsibility [insanity].”²⁷ In its commentary to the Standards, the ABA sheds further light on its position:

Given the absence of solid empirical data supporting either [giving or not giving a jury instruction on the consequences of NGRI], common sense and policy considerations must provide guidance. Providing for an instruction seems the most sensible approach given the potential for prejudice to

defendants when the alternative course is followed. Particularly in cases in which defendants are charged with violent crimes (which is usually the case if the nonresponsibility issue is tried to a jury, as opposed to a judge) juries need to be told about the effect of a finding of mental nonresponsibility [insanity] if the possibility of serious injustice is to be avoided. The fear of compromise verdicts is misplaced [Ref. 27, p 381, comment].

The ABA used a balancing approach and determined that fairness to the defendant weighed in favor of providing an instruction on disposition of insanity acquittees.

Empirical Research

Research on public and juror awareness of insanity disposition is limited. When *Shannon* was decided in 1994, empirical research on the topic was even more sparse than today. However, there have been a few important research studies on the subject.

In 1956, Weihofen²⁸ published preliminary results from a study at the University of Chicago Law School. Although dated, the study is informative. In that study, scholars looked at juror behavior related to the insanity defense.

Preliminary statistics . . . show that . . . [the consequence of an NGRI verdict] is indeed one of the most important factors in the jury deliberations. “If we acquit him on the ground of insanity” the jury wants to know, “will he be set at liberty to repeat his act?” [Ref. 28, p 247, n 204].

The study revealed that the juries studied did not refrain from considering what would happen to the defendant before deciding their verdict (Ref. 28, p 247).

Morris *et al.*²⁹ also looked at attitudes toward the insanity defense. Morris surveyed 50 jurors who were involved in 10 bifurcated trials of defendants who pleaded the insanity defense. The jurors in the study were given questionnaires to complete. Morris reported:

Intrajury cognitive dissonance was evident in jurors’ response to many questions. For example, one juror indicated that he . . . had not considered [the NGRI] consequences issue prior to trial, that no one indicated during the trial what the [NGRI] consequences would be, that the jury did not discuss the [NGRI] consequences during its deliberations, and that his belief about the consequences affected his judgment and the judgment of other jurors in the insanity issue [Ref. 29, p 1077].

Morris *et al.*²⁹ also asked jurors, “What did you believe would happen to a defendant who was found not guilty by reason of insanity?” The results revealed that three jurors believed that the defendant would be placed in a special section of a prison for mentally

ill individuals; three jurors thought the defendant would be incarcerated; one juror said the defendant would get probation; and three other jurors believed the defendant would be released into the community (Ref. 29, pp 1066–79). The research noted that some jurors understood that NGRI acquittees are generally hospitalized (Ref. 29, p 1068).

Wheatman and Shaffer³⁰ studied mock-juror perceptions of the insanity defense. Half of the participants were given information about the consequences of an insanity verdict. Jury instructions on NGRI disposition had no effect on mock juror pre-deliberation preferences. However, there were differences in jury deliberation between those that were given explicit disposition instructions and those who were not given disposition instructions. Sixty percent of the jurors who received the consequence instruction voted that the defendant was NGRI, whereas seven percent of those who did not receive the instruction voted for NGRI. Juries that were not instructed on NGRI disposition feared that the NGRI acquittee would be released into the community to reoffend. Juries instructed about disposition understood that NGRI acquittees would not be freed but would receive psychiatric treatment.

In 2005, Sloat and Frierson³¹ published their research on juror attitudes and knowledge about mental health verdicts. They surveyed 200 prospective jurors about their understanding of mental illness verdicts (NGRI and Guilty but Mentally Ill (GBMI)) and the disposition of mentally ill defendants. They gave jurors a multiple-choice questionnaire. The jurors were asked, among other questions, to identify the definitions of the NGRI and GBMI verdicts and also the dispositions of the NGRI and GBMI verdicts. “[O]nly 4.2 percent of the prospective jurors correctly identified both the legal definitions and dispositional outcomes of the NGRI and GBMI verdicts” (Ref. 31, p 212). The authors also found that 84 percent of the study participants wanted to know the dispositional outcomes of the mental illness verdicts. “Because only 4.2 percent of prospective jurors in this study correctly identified the meaning and disposition of both the NGRI and GBMI verdicts, it can be hypothesized that jurors may be making decisions based on erroneous perceptions” (Ref. 31, p 213).

In 2011, Daftary-Kapur *et al.*³² published their work on juror knowledge. The authors developed a scale to examine laypersons’ knowledge of the insan-

ity defense and the influence of their knowledge on decision-making. They based their study design on Perlin’s insanity myths (Ref. 33; see also Ref. 34–37). Perlin³⁶ identified eight myths that drive public perception of the NGRI defense, including the notion that the NGRI defense is overused; that defendants using the NGRI defense are usually faking; that the insanity defense is utilized most in cases of violent crimes; that NGRI is a strategy used by criminal defense lawyers to get their clients acquitted; that there is no risk to a defendant who pleads NGRI; that trials in which the insanity defense is raised are battles of the experts; that insanity acquittees spend less time in custody than defendants convicted of the offense; and that NGRI acquittees are quickly released from custody.

On the basis of the myths identified by Perlin, Daftary-Kapur and colleagues first administered a questionnaire, identified as the Knowledge of the Insanity Defense Scale (KIDS), to undergraduate students in psychology. Although there was a relatively small sample size of 131 students, the study revealed that many students were misinformed about aspects of the insanity defense. One significant misunderstanding was that “most people who are found NGRI are released quickly” (Ref. 32, p 49).

The authors performed a second study, which (among other items) hypothesized that the KIDS would predict insanity verdicts in a mock insanity case vignette. The authors identified several factors that suggest that when laypersons are misinformed or ignorant of certain facts, it can affect their verdict decisions. Of relevance here, the authors found that students who believed that insanity acquittees are quickly released from custody were more likely to find the defendant guilty of the crime charged. “The results lend support to the notion that jurors come into the courtroom with preconceived notions based on experience, knowledge, beliefs, and biases . . . [which] play a significant role in their decision-making process” (Ref. 32, p 59).

Most recently, Schlumper³⁸ examined attitudes about the insanity defense among mock juror undergraduate students. One-third of the participants read a jury instruction about the consequences of an insanity acquittal. Another third of the participants read the jury instruction and a flow chart that outlined the consequences of an insanity acquittal. The final third of participants received no dispositional information. The study results were mixed. First, the

author asked the participants an open-ended question about the consequences to a defendant found NGRI. Of 113 participants, only 2 correctly identified the Georgia standard that the defendant would be committed to a mental health facility and that the period of confinement is indeterminate. Second, in contrast to the author's hypothesis, the dispositional instructions did not reliably affect participant verdicts. In fact, the participants who received the flowchart were more likely to recommend a prison sentence than were the participants in the other groups. The author cautioned that the participants may not have read or understood the disposition information, as was evident in their responses to the open-ended question.

Although these studies are limited in number and scope, they are illustrative of juror attitudes about the insanity defense. The studies draw from limited jurisdictions, narrowing their relevance across multiple jurisdictions. The studies further shed little light on particular characteristics of the jurors surveyed or the group dynamics involved in the particular jury deliberations. Nevertheless, the weight of the studies revealed instances of juror misunderstanding about insanity defense disposition.

Conclusions

In conclusion, states that find it inappropriate to give an instruction on NGRI consequences tend to emphasize the fact-finding role of the jury. They also argue that it is difficult to instruct the jury accurately as to the consequences of an NGRI verdict. However, maintaining the traditional role of the judge and jury needs to be weighed against the probability of juror misunderstanding and chance for misguided verdicts. An instruction on NGRI consequences need not be exhaustive; it simply must inform jurors that insanity acquittees are not immediately released into the community after the verdict.

From the work of Sloat and Frierson,³¹ an instruction on verdict consequences may be particularly important in jurisdictions that have both NGRI and GBMI verdicts. There appears to be considerable confusion about these verdicts and their disposition outcomes. An instruction is warranted to minimize juror confusion.

Providing jurors with an instruction on NGRI consequences reduces the risk of juror misinformation on the topic. The unique nature of the insanity

defense and the chance of juror confusion warrant the judiciary to educate the jury. Should courts want to limit the instruction, they could specifically instruct the jury that disposition information is given for the purpose of jury education and should not be used in determining a defendant's guilt or innocence. In the study by Morris *et al.*, one juror commented that he voted for a guilty verdict rather than insanity because he "did not want a mad dog released" (Ref. 29, p 1074). This statement exemplifies the rationale for instructing the jury on NGRI consequences.

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