The Political Offender: Forensic Psychiatric Considerations*

PHILLIP J. RESNICK, M.D.**

Unlike common criminals who act to further personal interests, political offenders are convinced of the truth of their beliefs and act out of altruistic motivation aimed at accomplishing social or moral change.[1] The political offender's moral dilemma is the conflict between his loyalty to general principles of law and the conviction that his "just cause" can only be accomplished by committing a crime.

The criminal accountability of an individual who commits a criminal act for political motives is clear. In *U.S. v. Cullen*,[2] the court stated:

> Good motive alone is never a defense when the act done is a crime. One may not commit a crime and be excused from criminal liability because he desired or expected that ultimate good would result from his criminal act. Moreover, if one commits a crime under this belief, however sincere, that his conduct was religiously, politically or morally required, that is no defense to the commission of a crime.

Although an illegal act done for a popular political purpose is a crime in the eyes of the law, there are two opportunities to reduce the consequences to the offender. First, the jury may bring back a verdict of "not guilty." This jury nullification may be an expression of community attitude which does not see the defendant as blameworthy. Second, the judge may mitigate the sentence.

Individuals who commit crimes for political motives are usually competent to stand trial – that is, they are able to understand the charges and rationally participate in the preparation of their defense. It is true that such persons may deliberately choose not to cooperate or even to disrupt their trial. This may serve their political motives by providing a public forum for the expression of their cause. However, since the non-cooperation is voluntary and rational, it is not relevant to their competence to stand trial.

Ensuring a political offender of a fair trial in our criminal justice system is never easy. When the political offender is also psychotic, some especially difficult issues are raised for the forensic psychiatrist. These may include assessment of the defendant's competency to stand trial, sanity at the time

*This paper was presented at the annual meeting of the American Academy of Psychiatry and the Law, Montreal, Quebec, on October 21, 1978.

**Dr. Resnick is an Assistant Professor of Psychiatry and Director of the Division of Forensic Psychiatry at Case Western Reserve University School of Medicine and an Instructor in the CWRU School of Law. He is also an Adjunct Professor at John Carroll University and Director of the Court Psychiatric Clinic serving Cleveland and Cuyahoga County.

of the act, and right to refuse to enter a plea of not guilty by reason of insanity (NGRI).

This paper will examine one such case in detail. The relationship between refusing a NGRI plea and competency to stand trial will be explored. It will be proposed that a NGRI defense should not be imposed against a defendant's wishes. The potential misuse of psychiatry to suppress political dissent will be discussed.

Case History

On September 24, 1975, a man held 14 persons hostage for several hours in an office building in Columbus, Ohio. The defendant was charged with extortion, felonious assault and 14 counts of kidnapping. The court referred him to me for psychiatric evaluation of his competency to stand trial.

Relevant Past History: The defendant married his high school sweetheart when he was 17 years old. A few months after the marriage, the defendant caused an explosion by using gasoline as a paint cleaner in their kitchen. When his wife died of burns six weeks later, the defendant felt that he had lost everything in life.

Two weeks after his wife's death, he joined the Navy and volunteered for duty in Viet Nam as a medical corpsman. He stated, "I didn't give a damn whether I came back or not." He performed his duties of evacuating the wounded from the field with boldness and daring. His intense guilt feelings about his wife's death increased when buddies with families were killed and he wasn't. On one occasion he spent 13 days in a military hospital for multiple fragment wounds. He still preferred to return to the dangers of work in the field over the relative safety of hospital work.

The patient was transferred to a Naval hospital in the United States because of a wrist injury. He arrived September 4, 1968, the date of his deceased wife's birthday. He felt that this was "phenomenal" and began to hear voices. The next day he heard a preacher speaking over the radio say, "Your time will come Thursday." He interpreted this to mean that he would die while undergoing wrist surgery September 28th, the second anniversary of his wife's death. He requested to speak with a psychiatrist, but became angry when he was transferred to a psychiatric ward.

Mental status examination at that time reported that the defendant had inappropriate affect, blocking, auditory hallucinations, voices coming out of the radio telling him that he was impotent, and a thought disorder. He was treated with anti-psychotic medication. He felt that he did not belong in a psychiatric ward and assumed the attitude of a martyr. He was transferred to a second Naval hospital where the doctors concurred in a final diagnosis of schizophrenia. At his insistence he was discharged from the hospital before the doctors felt he was ready. He never accepted the fact that he had been mentally ill and would not consider applying for Veteran's Administration disability compensation.

Background Events Leading to the Crime: After leaving the Navy, the defendant went to work as an apprentice in a large company. He learned that he would not be eligible for V.A. educational benefits because the company's policy did not meet the V.A. requirements. The defendant felt that this was unfair and "a question of right and wrong." He felt that the

company's treatment of veterans was a disgrace especially considering those who had died in Viet Nam. During the next few years, the defendant sent hundreds of letters to company officials, congressmen and the Veteran's Administration. Nonetheless, the company refused to change its policy.

On September 4, 1975, the defendant sent a final round of letters to the Vice-President of the United States, important Senators and all members of the House of Representatives. He put the stamps on these letters upside down as a symbol of protest and a "cry for help." He then felt that he had tried every possible non-violent way to effect change.

Defendant's Account of the Crime: The defendant left his home in Missouri and went to Columbus, Ohio, the headquarters of the company. His suitcase contained a sawed-off shotgun and a loaded pistol. Realizing the possibility of bing killed, he wrote a will the evening before taking the hostages. On the morning of the crime, he symbolically placed a "live" shell in a "dead" monument cannon in downtown Columbus. He loaded his shotgun by stuffing it with letters concerning his grievance. He believed that if he did not die, his trial would give him a chance to influence public opinion. He perceived himself as a long-suffering humanitarian, exploited by one of the great industrial empires of the nation, pursuing a noble purpose.

He went to the company headquarters and took 14 hostages. He fired his pistol twice. He demanded that the company promise to give educational benefits to all veterans immediately. He released the hostages only after his demands had been aired on national television and the company had agreed to comply with them.

Mental Status Examination: The patient was a friendly, cooperative man who told his story in an animated fashion. His thoughts were generally logical and coherent, but he did show evidence of rigid and concrete thinking. He was fixed on the one idea that he must succeed in getting the company to change its policy. He showed grandiosity in his belief that he could alter company policy. He showed some loosened associations, particularly when he spoke about his concerns over the injustice in the world. He was fully oriented and showed unusual knowledge about vested interests in society. He was certain he was not mentally ill.

Psychological Testing: Intelligence testing showed an I.Q. of 113. His personality pattern revealed that he was critical, sensitive, aggressive, resistive and explosive. There was evidence of grandiosity, intellectual pretentiousness and single-minded persistence. There was a sense of omnipotence which resisted efforts to deal with reality. The underlying personality adjustment was paranoid.

Psychiatric Diagnosis was paranoid schizophrenia.

Defendant's Attitude Toward His Trial: The defendant stated that he would rather spend 50 years in prison and have the company meet his demands than be unsuccessful and go free. He stated that if he were set free, he would continue his struggle against the company and was positive that he would eventually prevail. He predicted that as a result of his actions, he would do a "long stretch."

He intended to plead not guilty. He felt that careful selection of the jury was not necessary because "any twelve people will agree that the company has shafted Viet Nam veterans." He believed that the company's policies

would be on trial rather than his own behavior. He intended to present his own case with the assistance of an attorney. He felt that attorneys, politicians, corporate officials and psychiatrists were motivated by self-serving goals. He refused to consider a NGRI plea – both because he did not believe he was mentally ill and because he felt that such a plea would hurt his "cause." He felt that the "cause" was more important than any personal consequences.

Forensic Psychiatric Issues: The interweaving of political and psychotic motives made the evaluation of this defendant complex. Hacker has classified terrorists as "criminals, crusaders, or crazies."[3]

"Crusaders," or political terrorists, tend to be self-sacrificial and are most anxious to have media coverage. They are certain of the moral rightness of their cause and believe that the end justifies the means. They may be quite unrealistic about what is likely to be accomplished. They are likely to select the time, place and hostages for symbolic value.

"Crazies," or psychotic terrorists, are described as irrational, unpredictable and likely to make unrealistic demands. They may be positive that they will be vindicated in the eyes of the world if only their case can be heard. They may be grandiose, believing themselves to be agents of God performing special missions. Psychotic hostage-takers frequently have histories of past psychiatric hospitalizations.

The defendant in the case example exhibited all of the features associated with individuals who take hostages for political purposes. He also showed the following features of psychotic hostage-takers: unrealistic demands; certainty of jury support; grandiosity; history of past psychiatric hospitalization.

The evidence of psychosis in this case could be debated. If the defendant was not psychotic, he would be criminally accountable and competent to stand trial. For our current purpose, however, let us assume that the defendant was psychotic.

In Ohio, the controlling case on insanity, *State v. Staten*,[4] states:

> In order to establish the defense of insanity, the accused must establish . . . that disease or other defect of his mind had so impaired his reason that, at the time of the criminal act with which he is charged, either he did not know that such an act was wrong or he did not have the ability to refrain from doing that act."

Since we are assuming the defendant was psychotic, the mental disease requirement for insanity is met. The defendant knew that it was wrong in the eyes of society to kidnap the hostages. He believed the act was morally justified, however, by the need to bring public attention to his grievance. Although he showed some grandiosity in his expectations, he had no specific delusions about his behavior. In my opinion, he knew his act was wrong. I cannot state an opinion with reasonable medical certainty about whether his psychosis made him unable to refrain from his actions. A successful NGRI defense was not likely.

Several factors favored the defendant's competency to stand trial. He had a clear understanding of the charges against him. He was able to describe the

crime and his motivation to his attorney. He had a good understanding of courtroom procedure, the penalties that he faced, and the probable outcome. His behavior in court was likely to be manageable. He was able to challenge prosecution witnesses. His relationship with his attorney was adequate, although he did not place complete faith in him.

Other factors raised concern about the defendant's competency. His loosened associations and persistent focus on industrial exploitation raised questions about the defendant's ability to testify relevantly. I was not certain that he could rationally plan a defense strategy because he seemed to believe that the company, rather than his behavior, would be on trial. He believed that the maltreatment of veterans by the company would be obvious to any twelve people. Finally, his refusal to consider a NGRI plea cast doubt on his ability to appraise his available defenses.

Initially, I had reservations about the defendant's competence to stand trial. The defense attorneys revealed that they had decided, independent of the defendant's wishes, that it was best not to enter an insanity plea. With this potentially self-defeating issue removed, I concluded that the defendant was competent.

Trial Behavior and Outcome: The defendant insisted, over the protests of his attorneys, on participating actively in his own defense. At one point he was prepared to discharge them if they failed to conduct the trial as he demanded. He was an extremely effective witness and gained the sympathy of the jury. Although he did focus some nationwide attention on his grievance, he did not succeed in changing the company's policy. He was found guilty of felonious assault and extortion, but was acquitted on all 14 counts of kidnapping. He was sentenced to prison for two to fifteen years.

The Right of a Defendant to Refuse an Insanity Plea

There are a number of reasons why a defendant may choose to not enter a NGRI plea. He may believe that he is not guilty or that he was not mentally ill. These beliefs may be true or based on psychotic misperceptions. He may feel the need to be punished for his crime. He may decline because of the stigma associated with mental illness, particularly criminal insanity. He may prefer to go to prison rather than a psychiatric hospital because of fear or knowledge that conditions are better in prison. Finally, he may rationally conclude that he probably will be institutionalized for a shorter period if he does not enter a NGRI plea.

At present, the law does not give a defendant the right to refuse an insanity plea. Under the proper circumstances, the defense attorney, prosecutor or court may inject the defense against the defendant's wishes.

Role of the Defense Attorney: An attorney faces a dilemma if he cannot convince his client to enter a NGRI plea. He must decide whether he is an advocate of his client's desires or the legal guardian of his client's interests. If an attorney enters the plea over the protests of his client, he risks either being dismissed or being accused of unprofessionalism. If he fails to enter a NGRI plea, however, he may be open to charges of rendering incompetent assistance of counsel.[5]

Role of the Prosecutor: Those who believe it is proper for the prosecutor to raise the insanity issue see the prosecutor's function as:

> the representative not of an ordinary party to a controversy, but of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. (*Burger v. U.S.*)[6]

Others believe that the prosecution should not be allowed to present evidence which tends to establish a defense. They feel that it is the duty of the prosecution to make any evidence of insanity available to the defense, so that the defense may use it if it wishes to do so.[7]

Role of the Court: In 1895 the United States Supreme Court stated in *Davis v. U.S.*[8] that either the court or the prosecution in addition to the defense could raise the insanity issue. However, jurisdictions have varied in their approach to the issue.

In 1941, a unanimous Supreme Court decision of the State of Colarado declared:

> Under no circumstances can the court, on its own motion, enter the plea of not guilty by reason of insanity. Such a plea is in the nature of confession and avoidance . . . (The) defense can only be raised by special plea. (*Boyd v. People*)[9]

In November, 1969, Frederick Lynch was charged with a misdemeanor in Washington, D.C. for writing, during a manic episode, two $50 checks with insufficient funds. Although he was initially found not competent to stand trial, he was returned to court within one month. A psychiatrist from St. Elizabeth's hospital testified that he was then competent and that his criminal act was the product of mental disease. The defendant, with the concurrence of counsel, wished to enter a guilty plea for rational reasons. The penalty was likely to be less severe than the indefinite period he would spend in St. Elizabeth's hospital if he succeeded in a NGRI plea.

At the trial, in a reversal of roles, the defense sought a conviction and the prosecution an acquittal by reason of insanity. The prosecution argued that "allowing Mr. Lynch to plead guilty and go to prison does not square with the public policy of treating such seriously mentally disturbed persons . . . for their own good."[10] Mr. Lynch was found NGRI and automatically committed to St. Elizabeth's hospital.

In *Overholser v. Lynch,*[11] the U.S. Court of Appeals in the District of Columbia upheld the right of the trial court to impose such an insanity defense on a competent defendant as well as the automatic commitment. In *Lynch v. Overholser,*[12] the U.S. Supreme Court upheld the use of the involuntary insanity defense. It overturned the Appeals Court decision, however, by holding that a separate civil hearing was required for commitment because the NGRI defense was imposed by the Court against the defendant's wishes.

Because Mr. Lynch was found NGRI, he was taken from the care of a private physician and placed on a hospital ward which housed 1000 patients cared for by precisely two psychiatrists. Mr. Lynch wrote that he could not

crime and his motivation to his attorney. He had a good understanding of courtroom procedure, the penalties that he faced, and the probable outcome. His behavior in court was likely to be manageable. He was able to challenge prosecution witnesses. His relationship with his attorney was adequate, although he did not place complete faith in him.

Other factors raised concern about the defendant's competency. His loosened associations and persistent focus on industrial exploitation raised questions about the defendant's ability to testify relevantly. I was not certain that he could rationally plan a defense strategy because he seemed to believe that the company, rather than his behavior, would be on trial. He believed that the maltreatment of veterans by the company would be obvious to any twelve people. Finally, his refusal to consider a NGRI plea cast doubt on his ability to appraise his available defenses.

Initially, I had reservations about the defendant's competence to stand trial. The defense attorneys revealed that they had decided, independent of the defendant's wishes, that it was best not to enter an insanity plea. With this potentially self-defeating issue removed, I concluded that the defendant was competent.

Trial Behavior and Outcome: The defendant insisted, over the protests of his attorneys, on participating actively in his own defense. At one point he was prepared to discharge them if they failed to conduct the trial as he demanded. He was an extremely effective witness and gained the sympathy of the jury. Although he did focus some nationwide attention on his grievance, he did not succeed in changing the company's policy. He was found guilty of felonious assault and extortion, but was acquitted on all 14 counts of kidnapping. He was sentenced to prison for two to fifteen years.

The Right of a Defendant to Refuse an Insanity Plea

There are a number of reasons why a defendant may choose to not enter a NGRI plea. He may believe that he is not guilty or that he was not mentally ill. These beliefs may be true or based on psychotic misperceptions. He may feel the need to be punished for his crime. He may decline because of the stigma associated with mental illness, particularly criminal insanity. He may prefer to go to prison rather than a psychiatric hospital because of fear or knowledge that conditions are better in prison. Finally, he may rationally conclude that he probably will be institutionalized for a shorter period if he does not enter a NGRI plea.

At present, the law does not give a defendant the right to refuse an insanity plea. Under the proper circumstances, the defense attorney, prosecutor or court may inject the defense against the defendant's wishes.

Role of the Defense Attorney: An attorney faces a dilemma if he cannot convince his client to enter a NGRI plea. He must decide whether he is an advocate of his client's desires or the legal guardian of his client's interests. If an attorney enters the plea over the protests of his client, he risks either being dismissed or being accused of unprofessionalism. If he fails to enter a NGRI plea, however, he may be open to charges of rendering incompetent assistance of counsel.[5]

Role of the Prosecutor: Those who believe it is proper for the prosecutor to raise the insanity issue see the prosecutor's function as:

> the representative not of an ordinary party to a controversy, but of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. (*Burger v. U.S.*)[6]

Others believe that the prosecution should not be allowed to present evidence which tends to establish a defense. They feel that it is the duty of the prosecution to make any evidence of insanity available to the defense, so that the defense may use it if it wishes to do so.[7]

Role of the Court: In 1895 the United States Supreme Court stated in *Davis v. U.S.*[8] that either the court or the prosecution in addition to the defense could raise the insanity issue. However, jurisdictions have varied in their approach to the issue.

In 1941, a unanimous Supreme Court decision of the State of Colarado declared:

> Under no circumstances can the court, on its own motion, enter the plea of not guilty by reason of insanity. Such a plea is in the nature of confession and avoidance . . . (The) defense can only be raised by special plea. (*Boyd v. People*)[9]

In November, 1969, Frederick Lynch was charged with a misdemeanor in Washington, D.C. for writing, during a manic episode, two $50 checks with insufficient funds. Although he was initially found not competent to stand trial, he was returned to court within one month. A psychiatrist from St. Elizabeth's hospital testified that he was then competent and that his criminal act was the product of mental disease. The defendant, with the concurrence of counsel, wished to enter a guilty plea for rational reasons. The penalty was likely to be less severe than the indefinite period he would spend in St. Elizabeth's hospital if he succeeded in a NGRI plea.

At the trial, in a reversal of roles, the defense sought a conviction and the prosecution an acquittal by reason of insanity. The prosecution argued that "allowing Mr. Lynch to plead guilty and go to prison does not square with the public policy of treating such seriously mentally disturbed persons . . . for their own good."[10] Mr. Lynch was found NGRI and automatically committed to St. Elizabeth's hospital.

In *Overholser v. Lynch,*[11] the U.S. Court of Appeals in the District of Columbia upheld the right of the trial court to impose such an insanity defense on a competent defendant as well as the automatic commitment. In *Lynch v. Overholser,*[12] the U.S. Supreme Court upheld the use of the involuntary insanity defense. It overturned the Appeals Court decision, however, by holding that a separate civil hearing was required for commitment because the NGRI defense was imposed by the Court against the defendant's wishes.

Because Mr. Lynch was found NGRI, he was taken from the care of a private physician and placed on a hospital ward which housed 1000 patients cared for by precisely two psychiatrists. Mr. Lynch wrote that he could not

bear the monotony and absence of treatment. After winning his appeal to the Supreme Court, Mr. Lynch committed suicide at St. Elizabeth's hospital on the eve of his civil commitment hearing.

In the 1965 case of *Whalem v. U.S.*,[13] the U.S. Court of Appeals in the District of Columbia held that a defendant may refuse to enter a NGRI plea but may not prevent the court from injecting it. The court stated:

> If an accused does not know what he is doing or cannot control his conduct or if his acts are the product of a mental disease or defect, he is morally blameless and not criminally responsible. The court may refuse to allow conviction of an obviously mentally irresponsible defendant, and when there is sufficient question as to the defendant's mental responsibility at the time of the crime that issue must become part of the case.

In 1968, the same court in *Cross v. U.S.*[14] indicated that although the court has the final word about raising the insanity defense, the defendant's wishes are highly relevant. The decision stated that the "active opposition of the defendant renders especially delicate a decision by court or counsel to override the defendant's wishes."

In 1977, a District of Columbia Court in *U.S. v. Robertson*[15] addressed the issue of a defendant's right to refuse a NGRI defense because of political motives. The defendant was convicted of second degree murder which he stated was of a quasi-political nature. At the trial he said, "A black man, I made a stand . . . whether I am right in the eyes of the law." He declined to plead NGRI because he felt it would denigrate his protest. He was diagnosed as schizophrenic in one psychiatric report; a second report stated a diagnosis of anti-social personality.

The court listed the following factors as relevant in deciding whether or not to impose a NGRI plea: 1) the quality of evidence supporting an insanity defense; 2) the defendant's wish in the matter; 3) the quality of the defendant's decision; 4) the reasonableness of his motives for the decision; 5) the court's observations of the defendant in proceedings.

In the Robertson case, the court noted that the defendant was consistently competent to stand trial. There was no past history of insanity. The court concluded that the defendant's decision was rational. Consequently, they declined to impose an insanity plea on the defendant.

Let us see what justification there would be in the court imposing a NGRI defense in the case of our hostage-taker. If the defendant showed no evidence of psychosis, such a court-imposed plea would be purely political suppression and serve to discredit his cause. Even with the psychosis, the evidence supporting a NGRI defense was questionable.

Although the defendant's wishes were quite clear, the quality of his decision was difficult to assess. The defendant was correct in realizing that a NGRI defense would interefere with the pursuit of his grievance. However, his psychotic thinking and grandiosity may have interfered with his assessment of whether a NGRI plea or a not guilty plea was more likely to be successful. In my opinion, once the defendant was found competent to stand trial, it would have been wrong for the court to impose a NGRI defense. The

insanity issue was never raised in the actual trial.

Proposal to Eliminate Court-Imposed Insanity Defenses

It is my opinion that courts do not serve justice by imposing a NGRI defense over a defendant's protests. A court-imposed finding of NGRI stigmatizes the defendant for a lifetime. It also creates great uncertainty for the defendant regarding the length of time he will be deprived of his freedom.

Relationship to Competency: The concept of competency to stand trial, by definition, affords the defendant latitude in his choice of plea. A competent defendant should be permitted to decline a NGRI plea because of an error in judgment, a different value system, an inaccurate assessment of the outcome or a political motive.

A defendant who refuses to enter a NGRI plea because of psychotic, illogical reasoning or irrational self-defeating goals is not able to rationally participate in the preparation of his defense. Such defendants should be adjudicated not competent to stand trial, rather than having a NGRI defense imposed on them.

For example, David Berkowitz, the "son of Sam" murderer, was found competent to stand trial and permitted to plead guilty to six counts of murder. According to his attorney, one reason for his refusal to plead NGRI was to have his warning about demons taking over the world taken more seriously.[16] If delusional beliefs about demons significantly influenced his choice of plea, he was not truly competent to stand trial. No plea should be accepted by the court in such a case until competence is restored.

Relevant Case Law: In *Barkman v. Sanford,*[17] the United States Court of Appeals for the Fifth Circuit declared:

> It seems thoroughly established that an intelligent accused may waive any consitutional right that is in the nature of a privilege to him, or that is for his personal protection or benefit.

In *Faretta v. California,*[18] the U.S. Supreme Court ruled that a defendant may waive the right to an attorney.

In *North Carolina v. Alford,*[19] the U.S. Supreme Court ruled that a defendant may plead guilty for reasons other than guilt. The Alford decision states that the standard is not whether the defendant committed an illegal act and had the necessary *mens rea,* but rather, "basically the standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant."

If a court is concerned about an injustice occurring because the defendant is blameless in the eyes of the criminal law, it should dismiss the case. This would have been a humane resolution for the Lynch case. Judge Brandeis once warned that it is necessary for us to be most on guard to protect liberty when a government's purposes are beneficent.[20] There need be no concern about a dangerous mentally ill person returning to the community because civil commitment could be initiated.

Once the burden of production has been met to raise the insanity issue in a trial, the majority of jurisdictions require that the defendant be found

NGRI if there is reasonable doubt about his sanity. The defendant who wishes to prove himself guilty is thus put in the untenable position of having to disprove his insanity beyond a reasonable doubt. Consequently, the court's authority to impose the NGRI defense may pass the dividing line between law and arbitrary power.

Suppression of Political Dissidents: Allowing a court to impose the insanity defense against the wishes of the defendant allows a government to potentially discredit the cause of a political offender and place him in a psychiatric hospital for an indefinite period.

Imposition of an involuntary insanity defense is consistent with both the letter and spirit of Soviet law.[21] The mood of paternalism, fundamental to such an approach, does not augur well for the preservation of individual rights. Berman states, "The Soviet accused is treated less as an independent possessor of rights and duties who knows what he wants and must stand or fall on his own defense than as a dependent member of the collective group, a youth whom the law must protect . . ."[22]

Recent documentation has been provided by Bloch and Reddaway about the systematic manner in which Soviet courts have imposed the insanity defense on political offenders.[23] Dissidents are labelled schizophrenic. The finding of NGRI is justified by the claim that the defendant did not know the significance of his act. If political dissent is manifested only by "lunatics," it is easily discredited.

Misuse of psychiatry is not unknown in the United States. For example, in 1964, hundreds of psychiatrists answered a questionnaire indicating that presidential candidate, Barry Goldwater, was paranoid. Consequently, the idea of using psychiatric labels for political purposes in this country is not far-fetched.

Eliminating the possibility of an involuntary insanity defense may cause those intent on using psychiatry to suppress political dissent to substitute the issue of competency to stand trial. Szasz has used the cases of General Edwin Walker and Ezra Pound to point out the potential for abuse of incompetency to stand trial.[24] The prolonged length of psychiatric detention was the primary problem that occurred in the Ezra Pound case. This type of abuse is no longer possible since the *Jackson v. Indiana* decision by the U.S. Supreme Court in 1972.[25] An additional protection could be the right to a jury trial on the competency issue.

Conclusion

In determining whether a defendant accused of a political crime is competent to stand trial, psychiatrists must not be influenced by the defendant's ideology, no matter how extreme. But we must not allow our concern about political suppression to deprive the truly psychotic political offender of the right to be competent at his trial.

The need to safeguard the rights of all defendants to participate rationally in their trial is more important than the occasional abuse of the competency issue. However, the potential for misuse of the court-imposed insanity defense far outweighs any potential benefits. Just as a competent defendant may waive his right to an attorney and plead guilty for reasons other than guilt, he should have the right to refuse a NGRI defense.

References

1. Friedman: Criminal responsibility and the political offender. 24 A.U.L. Rev. 74 (1975)
2. *United States v. Cullen*, 454 F.2d 386, 390 (7th Cir. 1971)
3. Hacker F: Crusaders, criminals, crazies. Norton 1976
4. *State v. Staten*, 18 Ohio St. 2d 13 (1969)
5. Bruning OM: The right of the defendant to refuse an insanity plea. Bull Amer Acad Psychiat Law 3:238-244
6. *Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314
7. Samuels: Can the prosecution allege that the accused is insane? 1960 Crim L Rev 453
8. *Davis v. United States*, 160 U.S. 469 (1895)
9. *Boyd v. People*, 108 Col. 289, 116 P.2d 193, at 195 (1941)
10. Arens: Due process and the rights of the mentally ill: The strange case of Frederick Lynch. 13 Catholic U.L. Rev. 453
11. *Overholser v. Lynch*, 109 U.S. App. D.C. 404, 288 F.2d 388 (1961)
12. *Lynch v. Overholser*, 369 U.S. 705, 82 S.Ct. 1063, 8 L.Ed.2d 211 (1962)
13. *Whalem v. U.S.*, 120 U.S. App. D.C. 331, 346 F.2d 812 (1965)
14. *Cross v. U.S.* 128 U.S. App. D.C. 416, 389 F.2d 957, 960 (1968)
15. *United States v. Robertson*, 430 F.Supp. 444 (1977)
16. Personal Communication with Leon Stern
17. *Barkman v. Sanford*, 162 F.2d 592, 594 (5th Cir. 1947)
18. *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)
19. *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct.160, 27 L.Ed.2d 162 (1970)
20. *Olmstead v. United States*, 277 U.S. 438 (1928)
21. Crim. Code of the R.S.F.S.R., Article II (1961) as reproduced by the United States Joint Publication Research Service
22. Berman: III, The challenge of Soviet law, 62 Harv L Rev, 449, 457 (1949)
23. Block S and Reddaway P: Psychiatric terror: How Soviet psychiatry is used to suppress dissent. Basic Books 1977
24. Szasz T: Psychiatric justice. New York: Macmillan, 1965
25. *Jackson v. Indiana*, 406 U.S. 715 (1972)