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Should Courts Instruct Juries as to the Consequences to a Defendant of a Not Guilty by Reason of Insanity Verdict

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SHOULD COURTS INSTRUCT JURIES AS TO THE CONSEQUENCES TO A DEFENDANT OF A "NOT GUILTY BY REASON OF INSANITY" VERDICT?

Shannon v. United States, 114 S. Ct. 2419 (1994)

I. INTRODUCTION

In *Shannon v. United States*,[1] the United States Supreme Court held that under the Insanity Defense Reform Act of 1984 (IDRA), courts need not instruct juries on the consequences to defendants of a verdict of "not guilty by reason of insanity (NGI)."[2] The Court first held that the IDRA contains no provision requiring such an instruction.[3] The Court also ruled that general federal practice did not mandate such an instruction.[4] This Note argues that the Court properly held that the IDRA does not require such an instruction, even though its legislative history implies that Congress envisioned that courts would give it. This Note further argues that the absence of empirical evidence indicating that jurors commonly misunderstand the nature of an NGI verdict supports the Court's position that general federal practice does not require the instruction. Finally, this Note contends that the longstanding proscription against telling jurors the consequences of their verdict remains in the absence of empirical evidence indicating that such an instruction might aid the defendant.

II. BACKGROUND

To properly assess the Court's decision in *Shannon v. United States*, it is necessary to examine three governing factors: the role of the jury throughout history; the effect that the passage of the IDRA had on the insanity defense; and various federal circuit court decisions regarding instructing the jury on the legal consequences of an NGI verdict.

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1 Shannon v. United States, 114 S. Ct. 2419 (1994).
2 *Id.* at 2428.
3 *Id.* at 2425.
4 *Id.* at 2427.

A. THE HISTORICAL EVOLUTION OF THE ROLE OF THE JURY

The modern jury finds its roots in eleventh century England, when courts initiated a practice of calling the defendant's neighbors to testify about various facts of the case at bar.[5] Eventually, courts began to ask these witnesses, known collectively as "the presenting jury," to determine whether the facts warranted a verdict of guilty or not guilty.[6] By the fourteenth century, the process had developed to the point where the jury that returned the verdict (known as the "petit jury") was different from the group of people who testified.[7] As a result, the jury's verdict became based not on the knowledge of its own members, but on the knowledge of other witnesses.[8] For the first time, the jury assumed its current role as the finder of fact.[9]

The United States inherited the jury in this form from Great Britain. After the Revolutionary War, the Framers recognized the right to trial by jury as fundamental to the protection of individual liberty.[10] The Constitution embodies this recognition in the Sixth and Seventh Amendments.[11]

At the time the Constitution was framed, however, the boundaries between the role of the jury and the role of the judge lacked clear definition. Courts generally upheld the presumption that the jury functioned solely as a factfinder, while the judge remained the arbiter of the law.[12] At the same time, however, the judge commonly instructed juries that they possessed the right to determine the law as well as the facts, and that they could reject the judge's determination of the law.[13]

In the mid-nineteenth century, courts began to curb this virtually unfettered power of the jury with the use of such mechanisms as the directed verdict and the special verdict.[14] Finally, the United States Supreme Court, which had previously upheld the jury's power to decide both the facts and the law, ruled that in federal criminal cases the

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5 RITA SIMON, THE JURY: ITS ROLE IN AMERICAN SOCIETY 5 (1980).

6 VALERIE P. HANS & NEIL VIDMAR, JUDGING THE JURY 27 (1986).

7 *Id.*

8 *Id.* at 28.

9 *Id.*

10 *Id.* at 36.

11 *See* U.S. CONST. amend. VI (" In all criminal prosecutions, the accused shall enjoy the right to . . . [a trial] by an impartial jury of the State and district wherein the crime shall have been committed . . . ."); U.S. CONST. amend. VII ("In suits at common law, . . . the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise reexamined in any Court of the United States . . . .").

12 HANS & VIDMAR, *supra* note 6, at 38.

13 *Id.*

14 *Id.* at 39.

jury ought to accept the judge's instructions on the law.[15] Thus, while the jury still had the ability to disregard its instructions without fear of punishment, it no longer possessed the Court's sanction to do so.[16]

This view of the proper disposition of judicial power between the judge and the jury persists today. Under this formulation, the legal consequences of a particular verdict are a question of law, within the exclusive province of the judge.

B. FEDERAL COURTS ON THE COMMITMENT INSTRUCTION PRE-IDRA

Prior to the passage of the IDRA in 1984, most federal jurisdictions did not distinguish a verdict of "not guilty by reason of insanity" from their standard "not guilty" verdict.[17] Thus, someone found NGI received the same treatment under the law as someone found simply "not guilty." These jurisdictions generally refused to allow courts to tell the jury the legal consequences to the defendant of an NGI verdict.[18]

When explaining their refusal to give such an instruction, most courts invoked a similar rationale—that the jury lacked any role in sentencing and, therefore, should not take sentencing into account when reaching a verdict.[19] Moreover, courts feared that an instruction regarding the legal consequences to the defendant of any verdict would distract the jury from its factfinding role and invite compromise verdicts.[20] Such a verdict might arise when a jury returns a verdict of not guilty in a case in which the prosecution has clearly met its burden of proof, simply because the jury feels that the defendant does not deserve as harsh a punishment as the law prescribes.[21] This fear of compromise verdicts, as well as the desire to maintain a clearly defined division of labor between the judge and the jury, prompted courts to refuse to give an instruction regarding the sentencing ramifications of any verdict.

The refusal to instruct the jury about the consequences of an NGI verdict actually worked to the defendant's advantage in most federal jurisdictions. As stated, with the exception of the law of the District of Columbia, no federal law provided for an NGI verdict separate from

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15 *Id.* at 40 (citing Sparf & Hansen v. United States, 156 U.S. 51 (1895)).

16 *Id.*

17 Joseph P. Liu, Note, *Federal Jury Instructions and the Consequences of a Successful Insanity Defense*, 93 COLUM. L. REV. 1223, 1229 (1993).

18 *See* Pope v. United States, 298 F.2d 507 (5th Cir. 1962).

19 *See* Rogers v. United States, 422 U.S. 35, 38 (1975); United States v. McCracken, 488 F.2d 406, 423 (5th Cir. 1974); United States v. Borum, 464 F.2d 896, 901 (10th Cir. 1972).

20 *Pope*, 298 F.2d at 508.

21 Liu, *supra* note 17, at 1228. This phenomenon is also known as "jury nullification."

the more standard verdict of "not guilty."[22] Furthermore, no federal statute allowed the trial court to mandate commitment for an NGI acquittee.[23] Rather, the states had to pursue separate civil commitment procedures against the NGI acquittee.[24]

NGI acquittees often went free because the federal courts and the state courts generally allocated the burden of proof of insanity differently.[25] To meet the burden under federal law, the accused often needed only to create a reasonable doubt as to their sanity.[26] State commitment procedures, however, generally required affirmative proof of insanity.[27] Because of the disparity, an NGI acquittee might offer enough evidence of insanity to satisfy the federal requirement, without providing enough evidence to enable the prosecution to trigger the state's commitment procedures. Thus, the NGI acquittee might escape institutionalization. The prohibition against informing juries of the consequences of a successful insanity plea, therefore, protected defendants. It foreclosed the possibility that the prosecution would play on the jurors' fears that a dangerous person would gain immediate release into society to gain a conviction.

Unlike the other federal jurisdictions, the District of Columbia did statutorily mandate commitment procedures following the return of an NGI verdict.[28] This precluded the possibility that an NGI acquittee might gain immediate release. Not surprisingly, the District of Columbia courts held different beliefs about the propriety of telling the jury the consequences of that verdict. In *Lyles v. United States*,[29] the D.C. Court of Appeals held that courts should always inform the jury that an NGI verdict led to the defendant's involuntary commitment, unless the defendant affirmatively indicated that he did not wish the court to the give instruction.[30] In so holding, the court acknowledged the familiar rule that the jury should not concern itself with the consequences of its verdict.[31] The court found persuasive, however, the argument that jurors did not hold a common understanding of the nature of an NGI verdict.[32] The court professed that the jury had a

22 *See Borum*, 464 F.2d at 900.

23 *Id.* at 901; *McCracken*, 488 F.2d at 422; United States v. Portis, 542 F.2d 414, 421 (7th Cir. 1976).

24 Liu, *supra* note 17, at 1228.

25 Henry T. Miller, Comment, *Recent Changes in Criminal Law: The Federal Insanity Defense*, 46 LA. L. REV. 337, 353 (1985).

26 *Id.* at 354.

27 *Id.* at 353-54.

28 D.C. CODE ANN. § 24-301 (1981).

29 254 F.2d 725 (D.C. Cir.) (en banc), *cert. denied*, 356 U.S. 961 (1957).

30 *Id.* at 729.

31 *Id.* at 728.

32 *Id.*

right to understand the insanity verdict in the same manner as it understood the verdicts of "not guilty" and "guilty."[33] Unlike court opinions from jurisdictions which refused to instruct the jury as to the consequences of an NGI verdict, the opinion in *Lyles* failed to mention any concern about fairness to the defendant.

C. THE INSANITY DEFENSE REFORM ACT OF 1984

Congress passed the Insanity Defense Reform Act of 1984[34] in response to virulent criticism of the insanity defense emanating from the John Hinckley trial.[35] The Act embodied a number of changes to the existing federal law. First, the Act provided a new standard for insanity, allowing defendants to offer, as an affirmative defense, evidence that at the time they committed the crime, they were unable to appreciate the wrongfulness of their actions.[36] This construction eliminated the alternative "irresistible impulse" prong of the test previously followed by some jurisdictions, whereby defendants might prove insanity by offering evidence that even though they appreciated the wrongfulness of their actions, they nevertheless lacked the ability to conform their behavior to the law.[37]

Second, the Act shifted the burden of persuasion from the prosecution to the defendants, who then had to prove their insanity by clear and convincing evidence.[38] This differed from previous federal guidelines, which required the defendant simply to raise the insanity defense, triggering a burden on the prosecution to prove the defendant's sanity beyond a reasonable doubt.[39]

Further, the Act provided for a verdict of "not guilty by reason of insanity" in addition to the two traditionally accepted verdicts of guilty and not guilty.[40] Previous law, as discussed, subsumed an NGI verdict into the umbrella "not guilty" category.

Finally, the IDRA set forth a federal procedure for commitment of defendants found NGI.[41] This aspect of the Act addressed perhaps the most serious loophole in pre-IDRA federal law—the possibility that the defendant might escape commitment because of the disparities between the federal and state evidentiary requirements for proof

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33 *Id.*

34 *See* 18 U.S.C. §§ 17, 4241-47 (1984).

35 *See* RITA J. SIMON & DAVID E. AARONSON, THE INSANITY DEFENSE: A CRITICAL ASSESSMENT OF LAW AND POLICY IN THE POST-HINCKLEY ERA 45-47 (1988).

36 *Id.* at 49.

37 *Id.*

38 *Id.* at 59.

39 *Id.* at 58-59.

40 *Id.* at 55.

41 *Id.*

of insanity.

D. FEDERAL JURISDICTIONS ON THE COMMITMENT INSTRUCTION AFTER THE PASSAGE OF THE IDRA.

The text of the IDRA does not indicate whether the trial court judge ought to instruct the jury on the consequences of an NGI verdict. The following statement in the legislative history of the statute, however, indicates that Congress gave judges the discretion to provide the instruction:

> The Committee endorses the procedure used in the District of Columbia whereby the jury, in a case in which the insanity defense has been raised, may be instructed on the effect of a verdict of not guilty by reason of insanity. If the defendant requests that the instruction not be given, it is within the discretion of the court whether to give it or not.[42]

Nevertheless, this statement loses some of its force since Congress did not include a similar provision in the text of the Act. The several federal jurisdictions that considered the question were split on whether judges should instruct juries about the consequences to the defendant of an NGI verdict. Generally, courts that grant little weight to legislative history refused the instruction, instead abiding by the traditional rule that the jury should not allow the consequences of its verdict to influence its deliberation. Courts that chose to employ legislative history as a tool for statutory interpretation often required the instruction.

In *United States v. Frank*,[43] the Ninth Circuit Court of Appeals held that the court should not give the instruction.[44] In *Frank*, the defendant was convicted of second degree murder, assault with intent to commit murder, and use of a firearm in commission of a crime of violence.[45] Frank appealed his convictions, basing his appeal in part on the trial court's refusal to instruct the jury as to the consequences of an NGI verdict.[46]

In affirming Frank's conviction, the Ninth Circuit relied on the longstanding belief that supplying juries with sentencing information both distracts them from their function as factfinders and leads to compromise verdicts.[47] The court further refused to give force to the

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42 S. REP. No. 98-225, 98th Cong., 1st Sess. 240 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3422.

43 956 F.2d 872 (9th Cir.), *cert. denied*, 113 S. Ct. 363 (1991).

44 *Id.* at 882.

45 *Id.* at 873-74. Respectively, these convictions recognized violations of 18 U.S.C. §§ 1111 and 1153; 18 U.S.C. §§ 113(a) and 1153; 18 U.S.C. §§ 924 (c) and 1153.

46 *Frank*, 956 F.2d at 878.

47 *Id.* at 879.

above cited statement of Congressional intent.[48] It declared that legislative history played a role in statutory interpretation only when the statute contained ambiguities. Since the IDRA failed entirely to speak on the subject of jury instructions, legislative history did not apply in this situation.[49]

The Eleventh Circuit employed similar reasoning in *United States v. Thigpen*.[50] The defendant in *Thigpen* was convicted of illegal possession of a firearm after a felony conviction.[51] Again, the court refused to instruct the jury that the defendant would face involuntary commitment if found NGI.[52]

The court in *Thigpen* raised a number of arguments in support of its holding. First, it pointed out that the IDRA fails to address the issue of a jury instruction regarding the consequences of an NGI verdict.[53] Second, it rejected defendant's argument that the instruction was necessary to correct jurors' possibly mistaken beliefs about the disposition of an NGI acquittee.[54] The court reasoned that the instruction would simply serve to draw jurors' attention away from their factfinding responsibilities.[55] The court further found the fact that the IDRA provided for mandatory commitment procedures irrelevant to its decision.[56]

Finally, the Eleventh Circuit raised the point that jurors are presumed to follow the court's instructions, which often include an admonition that the jury should not consider the possible consequences of its verdict during its deliberation.[57] The court stated that defendant's argument that the instruction was necessary to counter the jury's mistaken beliefs about the ramifications of an NGI verdict implied that jurors commonly violated this instruction.[58] The court was unwilling to lend credence to this implication.[59]

Both the Ninth Circuit and the Eleventh Circuit, however, recog-

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48 *Id.* at 881.

49 *See id.*

50 4 F.3d 1573 (11th Cir. 1993).

51 *Id.* at 1575.

52 *Id.* at 1578.

53 *Id.* at 1576.

54 *Id.* at 1577.

55 *Id.* (citing Pope v. United States, 298 F.2d 507, 508 (5th Cir. 1962)).

56 *Id.*

57 *Id.* at 1578.

58 *Id.*

59 *Id.*; *see also* Richardson v. Marsh, 481 U.S. 200, 211 (1987).

> The rule that juries are presumed to follow their instructions is a pragmatic one, rooted less in the absolute certitude that the presumption is true than in the belief that it represents a reasonable practical accommodation of the interests of the state and the defendant in the criminal justice process.

Id.

nized the necessity for a curative instruction when either the prosecutor or a witness stated, in the presence of the jury, that a defendant found NGI would be immediately released into society.[60] The Ninth Circuit, in *Evalt v. United States*,[61] was the first to recognize this need for a curative instruction. In *Evalt*, a prosecutor told the jury that if it found the defendant NGI, he would "walk out of this courtroom a free man."[62] The Ninth Circuit determined that this was an inaccurate statement of the applicable law, since the defendant fell under the jurisdiction of the Navy which would transfer him to a naval hospital for post-trial psychiatric treatment.[63] Further, the court held that the proscription against informing jurors as to the consequences of verdicts applied to prosecutors as well as defendants.[64] In other words, prosecutors could no more use the consequences of an NGI verdict to frighten jurors into conviction than defendants could use the information to allay jurors' fears.

The Eighth Circuit came to a different conclusion in *United States v. Neavill*.[65] In *Neavill*, the defendant had been convicted of threatening to take the life of the President, in violation of 18 U.S.C. § 871(a).[66] Neavill appealed, arguing that the trial court erred in not informing the jury of the consequences of an NGI verdict.[67] Following the reasoning of the D.C. Circuit in *Lyles*, the Eighth Circuit agreed that courts should give such an instruction to ensure jurors' understanding of the verdict.[68] Further, the court stated that since courts grounded their previous refusals to give the instruction in the possibility that an NGI acquittee might evade commitment, the change in the availability of federal commitment procedures supported giving the instruction.[69] The court further found the legislative history of the IDRA, endorsing the jury instruction, highly persuasive.[70]

Finally, a third line of reasoning about instructing the jury as to the legal consequences of an NGI verdict arose after the passage of the IDRA. This line advocated leaving the decision whether to give

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60 United States v. Thigpen, 4 F.3d 1753, 1578 (11th Cir. 1993).

61 359 F.2d 534 (9th Cir. 1966).

62 *Id.* at 545.

63 *Id.* at 546.

64 *Id.*

65 868 F.2d 1000 (8th Cir.), *vacated upon granting of reh'g en banc*, 877 F.2d 1394 (8th Cir.), *appeal dismissed at defendant's request*, 886 F.2d 220 (8th Cir. 1989) (en banc).

66 *Id.* at 1001.

67 *Id.* at 1002.

68 *Id.* at 1004-05.

69 *Id.* at 1004.

70 *Id.*

the instruction to the discretion of the trial court.[71] In *United States v. Blume*, the jury convicted the defendant of conspiracy to manufacture marijuana, possession of marijuana with intent to distribute, and interstate travel in furtherance of illegal activity.[72] Again, the defendant appealed based on the trial judge's refusal to instruct the jury as to the consequences of an NGI verdict.[73] The Second Circuit noted that the IDRA did not explicitly require the instruction and that other courts interpreting the statute usually refused the instruction.[74] However, the court relied on the legislative history discussed earlier and held that the Act permitted such an instruction, at the discretion of the trial judge.[75]

The *Blume* opinion is interesting in that it contains two concurring opinions, both of which further discuss the rationale behind allowing the instruction. The first concurrence, by Judge Newman, asserts that the trial judge should always give the instruction unless the defendant requests otherwise.[76] Judge Newman cited the changes in federal commitment procedures as negating the previous rationale behind the refusal to give the instruction.[77] Further, he expressed concern about possible wrongful convictions that might result from keeping the knowledge of mandatory hospitalization of NGI acquittees from jurors.[78]

Judge Winters' concurrence, on the other hand, stated his belief that judges should not routinely give the instruction.[79] Nevertheless, he agreed that a curative instruction might be necessary when the trial judge believed that a particular jury harbored the erroneous belief that the defendant would gain immediate release following an NGI verdict.[80]

The Third Circuit adopted Judge Winters' reasoning in *United States v. Fisher*.[81] The court also stated, however, that if jurors fear a particular defendant's release greatly enough that they are willing to disregard their oaths and convict him rather than return a verdict of NGI, they would likely not find reassurance in anything short of a

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71 United States v. Fisher, 10 F.3d 115, 121 (3d Cir. 1993); United States v. Blume, 967 F.2d 45, 49 (2d Cir. 1992).

72 *Blume*, 967 F.2d at 46-47.

73 *Id.* at 49.

74 *Id.*

75 *Id.*

76 *Id.* at 50 (Newman, J., concurring).

77 *Id.* at 50-53 (Newman, J., concurring).

78 *Id.* (Newman, J., concurring).

79 *Id.* at 53 (Winter, J., concurring).

80 *Id.* at 54 (Winter, J., concurring).

81 10 F.3d 115, 121 (3d Cir. 1993).

promise that the defendant would undergo a lengthy commitment period.[82] Since the IDRA mandates only a forty-day commitment period, with the trial court reassessing hospitalization at that point, the instruction might not serve its intended purpose.[83]

Thus, prior to the Supreme Court's decision in *Shannon*,[84] the federal circuits recognized a tension between the desire to protect defendants from wrongful verdicts and the need to discourage juries from returning compromise verdicts. The Supreme Court resolved this conflict in favor of the Ninth and Eleventh Circuits' approach.

III. Facts and Procedural History

During the early morning hours of 25 August 1990, Sergeant Marvin Brown of the Tupelo Police Department stopped Terry Lee Shannon as he walked down a city street.[85] The officer asked Shannon, a convicted felon then on parole, to accompany him to the police station to speak with a detective.[86] Shannon told Brown that he did not want to live anymore.[87] He then walked across the street, took a pistol from his coat, and shot himself in the chest.[88] Shannon survived his suicide attempt and was subsequently indicted for unlawful possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1).[89]

Shannon had taken possession of the pistol from his son earlier that day.[90] He claimed that his son had intended to go through airport security with the gun, and he had taken the pistol so that his son would not "get into trouble."[91] Shannon maintained that he intended to leave the gun at his mother's house until he could safely turn it over to his parole officer.[92] Apparently, Shannon had previously delivered a shotgun to his parole officer in this fashion.[93]

At his trial, Shannon raised the insanity defense.[94] Two clinical psychologists, one appointed by Shannon and one appointed by the

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82 *Id.* at 122.

83 *Id.*

84 United States v. Shannon, 114 S. Ct. 2419 (1994).

85 United States v. Shannon, 981 F.2d 759, 760 (5th Cir. 1993).

86 Shannon, 114 S. Ct. at 2423. The record does not specify why the detective wished to speak with Shannon.

87 *Id.*

88 *Id.*

89 *Id.*

90 Brief for Petitioner at 4, United States v. Shannon, 114 S. Ct. 2419 (1994) (No. 92-8346).

91 *Id.*

92 *Id.*

93 *Id.*

94 Shannon, 114 S. Ct. at 2423.

United States, testified to Shannon's state of mind.[95] They agreed that Shannon suffered from mental illness both at the time of the offense and at the time of trial, although they differed in the diagnoses assigned to Shannon's condition.[96]

At the close of testimony, Shannon asked the court to instruct the jury that he would be involuntarily committed if the jury should return a verdict of "not guilty by reason of insanity (NGI)."[97] Shannon's request arose out of his fear that, without this instruction, the jury might mistakenly believe that he would be immediately released into society, and thus the jury might return a guilty verdict simply to forestall this possibility. The district court refused his request, instead instructing the jury that it should not allow the legal consequences of its verdict to influence its decision.[98] The jury found Shannon guilty.[99]

Shannon appealed his conviction to the United States Court of Appeals for the Fifth Circuit.[100] He argued that the district court's refusal to give the requested instruction was clear error in light of the IDRA.[101] Shannon claimed that the IDRA mandated, or at least authorized, an instruction informing juries of the consequences of an NGI verdict.[102]

The Fifth Circuit held that the district court acted properly in refusing the proposed instruction.[103] It first rejected the proposition that the IDRA mandated a jury instruction regarding the consequences of an NGI verdict to the defendant.[104] In so holding, the court stated that the IDRA contained no explicit provision countermanding the traditional principle that a jury should not concern itself with the consequences of its verdict.[105] The court expressed its reluctance to tamper with the traditional view that the jury functions solely to determine guilt or innocence and has no sentencing role.[106] And

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95 Petitioner's Brief at 4, *Shannon* (No. 92-8346).

96 *Id.* Specifically, the government's psychologist diagnosed organic delusional brain disorder, while defendant's psychologist diagnosed schizophrenia. *Id.* at 7.

97 *Shannon*, 114 S. Ct. at 2423. The desired instruction read as follows:

> In the event it is your verdict that [Shannon] is not guilty only by reason of insanity, . . . [you] should know that it is required that the court commit [Shannon] to a suitable hospital facility until such time as [he] does not pose a substantial risk of bodily injury to another or serious damage to the property of others.

Petitioner's Brief at 18, *Shannon* (No. 92-8346).

98 *Id.*

99 *Id.*

100 *Id.*

101 United States v. Shannon, 981 F.2d 759, 763 (5th Cir. 1993).

102 *Id.*

103 *Id.* at 765.

104 *Id.* at 763.

105 *Id.* at 763.

106 *Id.* at 762.

since the IDRA contains no Congressional mandate specifically requiring courts to inform juries that an NGI verdict would lead to the involuntary commitment of the defendant, the jury has no need to understand the legal consequences of its verdict.[107]

Shannon next argued that the legislative history of the IDRA indicated that the Senate Committee endorsed, and therefore authorized, a procedure allowing courts to instruct the jury on the legal consequences of an NGI verdict if the defendant requests it.[108] The appellate court conceded that the legislative history did show such an endorsement.[109] The Fifth Circuit, however, citing *IBEW v. NLRB*,[110] asserted that the Committee Report had no effect on its reading of the IDRA.[111] The court reasoned that committee reports, while useful in interpreting ambiguous language in a statute, did not have the force of law.[112] Moreover, the IDRA did not contain ambiguous language in need of interpretation.[113] Finally, the court maintained that it lacked authority to enforce principles obtained from legislative history when that history failed to correspond to a specific statutory clause.[114]

The Supreme Court of the United States granted certiorari[115] to determine whether either the IDRA or general federal practice requires a federal district court to instruct the jury regarding the consequences of a verdict of "not guilty by reason of insanity."[116]

IV. Summary of Opinions

A. The Majority Opinion

In an opinion authored by Justice Thomas,[117] the Supreme Court affirmed the decision of the Court of Appeals for the Fifth Circuit.[118] The Court held that neither the IDRA nor general federal practice requires courts to instruct a jury as to the consequences to the defendant of a verdict of NGI.[119] The Court acknowledged an exception to

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107 *Id.* at 764.
108 *Id.* at 763.
109 *Id.*
110 814 F.2d 697, 712 (D.C. Cir. 1987).
111 *Shannon*, 981 F.2d at 763.
112 *Id.* at 764.
113 *Id.* at 763.
114 *Id.* at 764.
115 114 S. Ct. 380 (1993).
116 *Shannon*, 114 S. Ct. at 2421.
117 Chief Justice Rehnquist and Justices O'Connor, Scalia, Kennedy, Souter, and Ginsburg joined Justice Thomas' opinion.
118 *Shannon*, 114 S. Ct. at 2422.
119 *Id.*

this general rule in cases where the jury was specifically given a false impression of the ramifications of an NGI verdict.[120] The Court postulated a situation in which a prosecutor or a witness, in the presence of the jury, asserts that the defendant would "go free" if found NGI.[121] In such a situation, the Court noted that a district court might give an instruction to counter the misstatement.[122] Shannon's case fell outside this exception, however, since no evidence suggested that an erroneous statement had been made during his trial.[123] As a result, the Court affirmed the decision of the Fifth Circuit.[124]

Justice Thomas first stated the common premise that juries should not consider the consequences of their verdicts.[125] He professed that this general principle arises out of ideas concerning the proper division of labor between the jury and the judge—the jury functions to find facts and reach a verdict; the judge takes that verdict and imposes a sentence.[126] Justice Thomas further asserted that supplying the jury with sentencing information not only serves no relevant purpose, but actually encourages the jury to consider matters outside its realm, distracting it from its factfinding responsibilities and confusing it as to its role in the judicial process.[127]

Justice Thomas rejected Shannon's argument that the IDRA requires a jury instruction explaining the consequences of an NGI verdict.[128] He first pointed to the text of the Act, which refers to jury instructions only when it describes the possible verdicts which a jury might return.[129] The Court reiterated the Fifth Circuit's explanation that the text itself gives no indication that courts should tell jurors the ramifications of their particular verdicts.[130]

Second, the Court rejected Shannon's argument that because Congress modeled the IDRA on a D.C. statute, Congress implicitly adopted that jurisdiction's construction of the statute.[131] The Court of Appeals for the D.C. Circuit construed its insanity defense statute in *Lyles*,[132] in which the court endorsed the practice of instructing the

120 *Id.* at 2428.
121 *Id.*
122 *Id.*
123 *Id.*
124 *Id.*
125 *Id.* at 2424.
126 *Id.*
127 *Id.*
128 *Id.* at 2425.
129 *Id.*
130 *Id.*
131 *Id.* at 2424. Shannon relied on Capital Traction Co. v. Hof, 174 U.S. 1, 36 (1899), for this argument.
132 254 F.2d 725 (D.C. Cir.) (en banc), *cert. denied*, 356 U.S. 961 (1957). *See supra* notes

jury as to the consequences of an NGI verdict.[133] Justice Thomas asserted that this canon of interpretation served merely as a presumption of legislative intention, which failed when Congress varied the IDRA from the original D.C. statute in several significant ways.[134]

The Court also dismissed Shannon's argument that the legislative history of the IDRA clarified Congress' intent to adopt the procedure set forth in *Lyles*.[135] Adopting the logic of the Fifth Circuit, Justice Thomas reiterated that legislative history plays a part in statutory interpretation only when the language of the statute itself contains ambiguities.[136]

The Court additionally refused to lend credence to Shannon's final argument that general federal criminal practice required the court to give the instruction.[137] Essentially, Shannon argued that unlike with verdicts of "innocent" and "guilty," jurors have no general understanding of the nature of an NGI verdict.[138] Jurors may hold the mistaken impression that a defendant who is found NGI is immediately released into society.[139] This mistaken impression, coupled with a fear that the defendant poses a threat to the public, may tempt jurors to return a guilty verdict in situations where an NGI verdict is more appropriate.[140]

Justice Thomas contested the statement that jurors do not understand the meaning of an NGI verdict.[141] He declared that the media has educated the public about the insanity defense to the point that the public had the same basic understanding of an NGI verdict as it does of the more "traditional" verdicts of "guilty" and "not guilty".[142] Justice Thomas further asserted that jurors are instructed to reach their verdict with no consideration of punishment or penalty.[143] Thus, a mistaken impression as to the consequences of a verdict should have no effect on the jury's decision.[144] For these reasons, the

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28 to 33 and accompanying text.

133 *Shannon*, 114 S. Ct. at 2424.

134 *Id.* at 2425. Variations between the Insanity Defense Reform Act of 1984 and the D.C. analog include: different standards of proof the defendant must meet to prove insanity; different periods of mandatory commitment, and different standards used to determine when an NGI acquittee might be released from hospitalization.

135 *Id.* at 2426.

136 *Id.*

137 *Id.* at 2427. The Fifth Circuit did not address this argument in its opinion.

138 *Id.*

139 *Id.*

140 *Id.*

141 *Id.* at n.10

142 *Id.*

143 *Id.*

144 *Id.* The Court also addressed the possibility that the proposed instruction might backfire, given that the IDRA mandates only a 40 day commitment period. Given the short

Court adhered to the general tenet that district courts should not instruct juries as to the consequences of their verdicts, except in cases where an event at trial creates an erroneous impression as to those consequences.

B. JUSTICE STEVENS' DISSENT

Writing for the dissent,[145] Justice Stevens noted that prior to the passage of the IDRA, no jurisdiction other than the District of Columbia followed a statutorily mandated commitment procedure for NGI acquittees.[146] He argued that without such a commitment procedure, district courts properly refused to instruct the jury as to the legal consequences of an NGI verdict because of the strong possibility that an NGI acquittee would indeed "go free."[147] Thus, the refusal to instruct jurors in such situations protected defendants from improper verdicts returned by fearful juries.[148]

Justice Stevens went on to argue, however, that with the passage of the IDRA, the jurors' fears that an NGI verdict would lead to the defendant's immediate release became groundless.[149] The refusal to instruct as to the consequences of an NGI verdict now not only failed to protect defendants, but actually harmed them by failing to disabuse jurors of the erroneous belief that an NGI acquittee gained immediate release.[150] Justice Stevens maintained that it made no sense to adhere to a rule designed to protect defendants' rights when, due to the passage of the IDRA, the rule actually hindered its original purpose.[151]

Justice Stevens pointed to the legislative history of the IDRA, as did Shannon, to show that the legislature had fully intended the *Lyles* procedure to apply to all federal courts, protecting defendants from this danger.[152] Further, Justice Stevens proclaimed that "elementary notions of fairness" require that the court provide a clarifying instruction in circumstances where jurors might be operating under false assumptions about the nature of an NGI verdict.[153]

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commitment period, a jury might return a guilty verdict in a case where an NGI verdict was appropriate if it felt that the particular defendant was a danger to the public. *Id.* Finally, the Court offered a "slippery slope" argument, stating that there is no way to limit the availability of instructions regarding the legal consequences of a verdict solely to cases involving an NGI defense. *Id.* at 2428.

145 Justice Blackmun joined in the dissent.

146 *Shannon*, 114 S. Ct. at 2429 (Stevens, J., dissenting).

147 *Id.* (Stevens, J., dissenting).

148 *Id.* (Stevens, J., dissenting).

149 *See id.* at 2430 (Stevens, J., dissenting).

150 *Id.* (Stevens, J., dissenting).

151 *Id.* (Stevens, J., dissenting).

152 *Id.* at 2429 (Stevens, J., dissenting).

153 *Id.* at 2430 (Stevens, J., dissenting).

Justice Stevens also disputed the majority's argument that an instruction regarding the consequences of an NGI verdict would distract jurors from their factfinding responsibilities.[154] On the contrary, Justice Stevens contended that the instruction might free jurors from their apprehensions regarding punishment or penalty, allowing them to focus more closely on the task at hand.[155] The dissent concluded by stating that even if the jury already knew the consequences of an NGI verdict due to media exposure, as argued by the majority, no harm could ensue by repeating the information.[156]

V. ANALYSIS

A. OVERVIEW

While Shannon illuminates important concerns about fairness to defendants pleading NGI, none of the petitioner's arguments urging courts to instruct the jury about the consequences to the defendant of an NGI verdict survive scrutiny. Shannon first argued that the legislative history of the IDRA compelled an instruction on the consequences to defendants of an NGI verdict. The Court's refusal to rely on the legislative history of the IDRA comports with its previous decisions regarding the role of legislative history in statutory interpretation. In general, the Court does not rely on legislative history unless the language of the statute in question is ambiguous. Further, Congress might easily have included a requirement to instruct in the text of the statute, but chose not to do so. Thus, the instruction is not strictly required under the IDRA.

Second, petitioner's argument that jurors misunderstand the nature of an NGI verdict finds no support in empirical studies. While it appears true that the media distorts the perception of the insanity defense,[157] jurors apparently make a concerted effort to put aside their preconceived notions about the insanity defense when they enter the jury box.

Given the fact that empirical studies fail to show that juries base

154 *Id.* (Stevens, J., dissenting).

155 *Id.* (Stevens, J., dissenting).

156 *Id.* at 2431 (Stevens, J., dissenting).

157 Eric Silver et al., *Demythologizing Inaccurate Perceptions of the Insanity Defense*, 18 LAW & HUM. BEHAV. 63, 67-68 (1994) (discussing media distortion in terms of the level of use and success of the defense. For example, the public believes that 37% of felony indictments result in an insanity plea, whereas the reality is that only 0.9% of felony indictments yield that result. The public also believes that the average length of confinement for an NGI acquittee is 21.8 months; the actual average is 32.5 months for all crimes; 76.4 months for murder in particular. Finally, the public overestimates the success of the plea, believing that 44% of insanity pleas result in acquittal. Actually, only 26% of insanity pleas are successful).

their verdicts on incorrect assumptions about the law, it seems premature to overturn traditional notions about the function of the jury. Two basic principles are at risk. First, there is a longstanding reluctance to give the jury information that might encourage compromise verdicts. In other words, judges are fearful that juries will base verdicts on their impression of the particular defendant rather than on the objective factor of whether the prosecution has met its burden in proving the particular crime at issue. Second, there is some concern that providing the jury with sentencing information disrupts the delicate balance between the roles of the judge and of the jury in the American legal system.

The question of jury nullification addresses the same issue of whether juries should take the consequences of their verdicts into account when making their decisions. Jury nullification occurs when the jury ignores the law in a particular case, instead basing its decision on a consideration of which verdict will produce a desired outcome. The prohibition of jury nullification first expressed in *Sparf & Hansen v. United States*[158] answers that question in the negative. The disapproval of jury nullification arises from the basic notion that cases involving identical violations of the same law ought to produce identical outcomes. When the jury takes nonfactual information into account, including subjective opinions about the proper outcome for a particular defendant, the system becomes more arbitrary. In denying the instruction Shannon desired, the Court expressed its fear that such an instruction would encourage the jury to return a verdict based on whether it felt a particular defendant more properly belonged in prison or in a mental institution. Thus, the holding in *Shannon* is entirely consistent with the general proscription against encouraging jurors to consider the consequences of their verdicts when making their findings of fact.

The second general principle at risk in *Shannon* involves the proper roles of the jury and the judge. The jury has long held the role of factfinder, charged with reaching a conclusion about what events actually transpired in a particular case. The judge, on the other hand, instructs the jury on the law. Technically, the jury must only apply the law to the facts to reach a conclusion. As stated, cases with identical facts should result in identical verdicts. Instructing the jury about the ramifications of particular verdicts might highlight an area that the jury should not consider. Thus, identical cases might come out differently, depending on whether the defendant elicited the sympathy of the jury. The jury would be creating its own law, mix-

158 156 U.S. 51 (1895). *See supra* note 15 and accompanying text.

ing up the roles assigned to jurors and judges.

B. THE TEXT OF THE IDRA

In *Capital Traction Co. v. Hof*,[159] the Supreme Court ruled that "whenever Congress . . . has borrowed from the statutes of a State provisions which had received in that state a known and settled construction before their enactment by Congress, that construction must be deemed to have been adopted by Congress together with the text which it expounded . . ."[160] The Supreme Court later narrowed this holding, stating that this presumption varied in strength depending on the similarity in the statutes' language, the character of the decisions in the jurisdiction from which Congress adapted the provision, and other evidence of intention of the jurisdiction that borrowed the statute.[161]

Shannon argued that the *Capital Traction* precept of statutory construction required the Court to accept the decision of the D.C. Circuit in *Lyles*, which obligated a judge to instruct the jury on the consequences of an NGI verdict.[162] However, the Court in *Lyles* does not ground its holding in the text of D.C. CODE ANN. § 24-301 and cites no provision which requires a jury instruction. In fact, the D.C. statute contains no provision which speaks to the issue of jury instructions. Rather, the court frames its holding in terms of what the jury "has a right to know,"[163] basing its conclusion on the nebulous concept of fairness.

Given this, Congress could not possibly have modeled its provision about jury instructions on an analogous provision in the D.C. statute. Nor was Congress bound to accept the notions of fairness espoused in the *Lyles* decision.

Furthermore, the IDRA alters the D.C. statute in several important ways. The IDRA strictly defines insanity as the inability to appreciate the wrongfulness of one's actions.[164] In contrast, the D.C. statute allows for two manifestations of insanity—the inability to appreciate the nature of one's acts or the inability to conform one's actions to the law. Furthermore, the IDRA requires defendants to prove their insanity by "clear and convincing" evidence,[165] while the D.C. analog

159 174 U.S. 1 (1899).

160 *Id.*

161 Carolene Prods., Co. v. United States, 323 U.S. 18, 26 (1944).

162 *Shannon*, 981 F.2d 759, 763 (5th Cir. 1993).

163 *Lyles*, 254 F.2d at 728.

164 18 U.S.C. § 17(a) (1984).

165 18 U.S.C. § 17(b) (1984).

requires only a preponderance of the evidence.[166]

These differences suggest that Congress modeled the IDRA on the D.C. statute only to the extent that Congress created uniform federal guidelines for insanity pleas and for post-trial treatment of the NGI acquittee. Recognizing that the D.C. statute did not provide suitable guidelines, Congress drafted the IDRA to attain more desirable results. In other words, Congress intentionally changed section 24-301 because that statute failed to accurately reflect the goals Congress wished to achieve through the IDRA. Thus, the D.C. Circuit's construction of section 24-301 is irrelevant to the subsequent construction of the IDRA. As a result, the Court correctly held that the Act fails to decree that courts must give the proposed instruction.

C. THE LEGISLATIVE HISTORY OF THE IDRA

A heated contest rages about the role that legislative history plays in statutory interpretation. Justice White has asserted that "[a]s for the propriety of using legislative history at all, common sense suggests that inquiry benefits from reviewing additional information, rather than ignoring it."[167] In contrast, Justice Scalia has argued that courts should recognize the unreliability of legislative history and refuse to allow legislative history to have a dispositive effect on statutory interpretation.[168]

Recent decisions in which the Court employed legislative history as an interpretive tool tie the Congressional records to specific text in the statute at issue.[169] The text of the IDRA itself remains silent on the issue of jury instructions. Thus, the legislative history regarding jury instructions contains no statutory reference point. And as the Court stated, "courts have no authority to enforce a principle gleaned solely from legislative history that has no statutory reference point."[170]

Certainly, Congress could easily have addressed the issue of jury instructions in the text of the Act. As the Court noted, the IDRA represents the final product of an exhaustive review of the insanity defense in the federal context.[171] The endorsement of the "*Lyles* procedure" discussed in the legislative history of the IDRA implies that Congress knew that most jurisdictions did not provide the jury with information about the ramifications of an NGI verdict. If Con-

166 D.C. CODE ANN. § 24-301(j) (1981).

167 Wisconsin Pub. Intervenor v. Mortier, 501 U.S. 597, 611 n.4 (1991).

168 *Id.* at 615-18.

169 *Id.*; *see also* County of Wash., Or. v. Gunther, 452 U.S. 161 (1981).

170 Shannon v. United States, 114 S. Ct. 2419, 2426 (1994) (citing IBEW v. NLRB, 814 F.2d 697, 712 (D.C. Cir. 1987)).

171 *Id.* at 2428.

gress had intended to formalize its preference concerning appropriate jury instructions, it had every opportunity to do so. Since Congress did not issue such a mandate, the Court correctly concluded that the precept that juries should not concern themselves with the consequences of their verdicts still holds true under the IDRA.

D. EMPIRICAL STUDIES

Empirical studies indicate that most jurors understand that an NGI verdict results in the defendant's involuntary confinement to a mental hospital.[172] These results remain constant regardless of whether or not the jury received commitment instructions prior to deliberations.[173] These studies support the majority's contention that media attention has raised the public consciousness about the insanity defense, making the general public aware of the consequences of an NGI verdict. While the point is not central to the Court's holding, one of Shannon's main arguments in favor of giving the instruction rests on his assertion that the general public does not understand the nature of the verdict. These studies refute that assertion.

One recent study does indicate, however, that the media skews the public's perception of the insanity defense.[174] Specifically, the study claims that the public overestimates the level of use and success of the insanity defense.[175] Even this study concedes, however, that in recent years the media has portrayed the insanity defense in a much more realistic light, abandoning its previous sensationalism.[176] Thus, the earlier studies indicating that juries correctly assume that NGI acquittees undergo involuntary commitment proceedings subsequent to trial probably hold more truth today. Additionally, the study asserts only that the media skews the public perception of the circumstances which generally give rise to the insanity defense; it does not contend that the media distorts the public's understanding of the results of a successful insanity plea.

The dissent argued that if most jurors already understand that a defendant found NGI will be committed to an institution, no harm ensues in reiterating that fact. This statement rings hollow. While courts rarely know why jurors vote a certain way, the court need not

172 RITA J. SIMON, THE JURY AND THE INSANITY DEFENSE 93-94 (1967) (reporting that 93% of jurors given the commitment instruction and 91% of jurors not given the commitment instruction believed that an NGI acquittee would be confined to a mental hospital after trial); Grant H. Morris et al., *Whither Thou Goest? An Inquiry into Juror's Perceptions of the Consequences of a Successful Insanity Defense*, 14 SAN DIEGO L. REV. 1058, 1068 (1977).

173 SIMON, *supra* note 172, at 94.

174 *See* Silver et al., *supra* note 157.

175 *Id.* at 67.

176 *Id.* at 69.

encourage the jury to consider legal matters outside its province. An instruction such as the one Shannon proposed will plant the knowledge of the ramifications of an NGI verdict in each juror's mind immediately before deliberation begins. Arguably, this would increase the possibility of compromise verdicts.[177] The jury might use deliberation to determine whether or not it thinks that the defendant should go to prison or should get medical treatment. If the jury thinks the defendant is insane, but also thinks that the defendant is dangerous, it might return a verdict of guilty notwithstanding its belief in the defendant's insanity. Conversely, if the jury thinks that the defendant was not insane at the time the defendant committed the crime, but also thinks that the defendant would benefit more from medical treatment than from prison, it might return a verdict of NGI. Both of these scenarios represent abuses of power by the jury. An instruction as to the consequences to the defendant of an NGI verdict given immediately before deliberations begin enhances the possibility that those consequences will be uppermost in the minds of the jurors at the start of deliberations.

E. THE ANALOGY TO JURY NULLIFICATION

As discussed, for a brief period in American history, courts allowed juries to decide the law as well as the facts.[178] This practice had a twofold effect: (1) it marginalized the role of the judge, who could explain the law to the jury, but could not force the jury to decide the case on that basis, and (2) it encouraged juries to decide cases based on subjective feelings toward the defendant. The Supreme Court curtailed this practice at the end of the nineteenth century.[179]

Due to the shroud of secrecy that surrounds jury deliberations, however, the jury still possesses the power to return verdicts contrary to the evidence, even though it no longer possesses the right to do so.[180] The question whether juries should receive instructions to that effect has sparked much controversy. Courts generally have resolved that question in the negative, reasoning that advising the jury of its power of nullification encourages the jury to return a verdict that attains the result the jury thinks appropriate for the particular defendant.[181]

The question of whether courts should inform the jury of the

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177 *See* Shannon v. United States, 114 S. Ct. 2419, 2427 (1994).

178 HANS & VIDMAR, *supra* note 6, at 38. *See also supra* text accompanying notes 12 to 14.

179 *See* Sparf & Hansen v. United States, 156 U.S. 51, 74 (1895).

180 See HANS & VIDMAR, *supra* note 6, at 40.

181 *See, e.g.*, Commonwealth v. Mutina, 366 Mass. 810, 824 (1975) (Quirico, J., dissenting); United States v. Simpson, 460 F.2d 515, 518-19 (9th Cir. 1972).

consequences of an NGI verdict brings up the same issues as the question of jury nullification—the proper disposition of power between the judge and the jury, and whether the jury possesses the right to take potential outcomes into account when reaching a verdict. Since the Court's decision in *Sparf*, the role of the jury has been simply to reach a verdict based on the evidence and the applicable rules of law, as explained by the judge.[182] The jury must perform this function without regard to the consequences of its verdict.[183] The Court's decision in *Shannon* is entirely consistent with this view of the proper function of the jury.

VI. CONCLUSION

Rules establishing the proper roles of the judge and jury serve an important function. They maintain the appearance of fairness necessary for the judicial system to work. Cases with identical facts will hopefully yield identical results, regardless of who is on the jury or who sits on the bench. When courts encourage the jury to consider the ramifications of its verdict, the likelihood of this result decreases, and the judicial system appears arbitrary. Like the principle against jury nullification and the general proscription against involving the jury in sentencing (except in certain capital cases), the Court's refusal to instruct the jury on the consequences of an NGI verdict protects the integrity of the judicial system.

Naturally, courts should provide as fair a trial for defendants as possible. The Court's decision in *Shannon* serves this purpose by allowing for a curative instruction in the face of a misstatement by the prosecutor or a witness. This compromise addresses the concerns of all parties involved and may be the best solution to a difficult problem.

RANDI ELLIAS

182 United States v. Fisher, 10 F.3d 115, 121 (3d Cir. 1993).
183 *Id.*