


5-1-1986

# An Analysis of Public Attitudes Toward the Insanity Defense

Valerie P. Hans

*Cornell Law School*, [valerie.hans@cornell.edu](mailto:valerie.hans@cornell.edu)

Follow this and additional works at: <http://scholarship.law.cornell.edu/facpub>

 Part of the [Applied Statistics Commons](#), [Criminal Law Commons](#), [Criminal Procedure Commons](#), [Law and Society Commons](#), and the [Litigation Commons](#)

---

## Recommended Citation

Hans, Valerie P, "An Analysis of Public Attitudes Toward the Insanity Defense" (1986). *Cornell Law Faculty Publications*. Paper 330. <http://scholarship.law.cornell.edu/facpub/330>

This Article is brought to you for free and open access by the Faculty Scholarship at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Law Faculty Publications by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact [jmp8@cornell.edu](mailto:jmp8@cornell.edu).

# AN ANALYSIS OF PUBLIC ATTITUDES TOWARD THE INSANITY DEFENSE\*

VALERIE P. HANS

University of Delaware

*Results from a public opinion survey of knowledge, attitudes, and support for the insanity defense indicate that people dislike the insanity defense for both retributive and utilitarian reasons: they want insane lawbreakers punished, and they believe that insanity defense procedures fail to protect the public. However, people vastly overestimate the use and success of the insanity plea. Several attitudinal and demographic variables that other researchers have found to be associated with people's support for the death penalty and perceptions of criminal sentencing are also related to support for the insanity defense. Implications for public policy are discussed.*

Over the last several decades, social scientists have devoted considerable attention to studying public opinion about law and the legal system. Rapid advances in public opinion polling techniques made such research feasible while intellectual developments, especially legal realism, provided theoretical justification (Sarat, 1977). Additional impetus for scrutiny of public opinion about the law came from recognition that people's views of the legal system had direct impact on that system by affecting compliance with laws, willingness to rely on legal procedures to adjudicate disputes, and even legislative changes in the law itself (Page and Shapiro, 1983). When the public expresses substantial disapproval of particular laws or legal procedures, it is therefore cause for concern. The overwhelmingly negative public response to the insanity defense thus deserves scholarly attention.

As many commentators have pointed out, the enormous controversy and debate about the insanity plea stand in marked contrast to the relatively few defendants who employ it. That most members of the public nevertheless disapprove of the defense was all too apparent in the wake of John Hinckley's insanity acquittal on charges relating to his attempted assassination of President Reagan. But public and legislative response to the Hinckley verdict is only the most recent episode in a long-standing public disaffection with the insanity plea. Opinion surveys conducted well before Hinckley's shooting of Reagan reveal that for some time the majority of Americans have held the view that the insanity plea is a loophole that allows too many guilty people to

---

\* This research was supported by a General Research Fund grant from the University of Delaware. The author wishes to thank Tom Tyler, Margaret Andersen, Chris Boorse, Sam Gaertner, and Ed Ratledge for helpful comments on a previous draft.

go free (Bronson, 1970; Fitzgerald and Ellsworth, 1984; Harris and Associates, 1971). History suggests that this negativity is not limited to the contemporary United States. Moran (1981) has described the uproar in Victorian England following the Not Guilty by Reason of Insanity verdict of Daniel McNaughtan in 1843, while Rosenberg (1968) has detailed the public derision of President Garfield's assassin, Charles Guiteau, who unsuccessfully defended himself against the charges by claiming insanity.

As representatives of the public, juries appear to be unsympathetic to defendants' pleas of insanity. Insanity pleas succeed in only a small proportion of cases (Pasewark, 1981), a fact that suggests that judges and juries are skeptical of the defense. Simon's (1967) jury simulation study of insanity trials employed people on the regular jury rolls as mock jurors. A review of their deliberations reveals considerable suspicion and distrust of the insanity plea (Simon, 1967: 132-179). The Hinckley jurors, too, in testimony before a Senate subcommittee, expressed dissatisfaction with the legal rules governing the insanity plea (United States Congress, 1982).

The collected evidence all points to an enduring pattern of public animosity to the insanity plea. However, while it is known that such negativity exists, comparatively little is known about the sources and structure of people's attitudes toward the plea. Just what is it about the plea that people seem to find so offensive? What determines people's support for and beliefs about the defense? Are people's views about the plea related to other attitudes they hold toward the legal system and criminals or are there distinctive features of insanity defense support and opposition?

#### DEMOGRAPHIC AND ATTITUDINAL CORRELATES OF INSANITY DEFENSE SUPPORT

From theoretical work on attitudes toward other criminal justice issues, one can derive a number of potential sources of support for or opposition to the insanity defense. Researchers have shown that agreement with the statement that the insanity defense is a loophole is significantly associated with support for the death penalty (Bronson, 1970; Fitzgerald and Ellsworth, 1984; Harris and Associates, 1971). These scholars argue that death penalty attitudes are part of a larger cluster of attitudes related to crime and justice issues. Those who give punitive responses on one dimension tend to have similarly punitive reactions to other topics. All these responses may be part of a crime-control or a due-process orientation toward the criminal justice system (Ellsworth and Ross, 1983; Fitzgerald and Ellsworth, 1984; Packer, 1968). The source of these attitudes may stem from the personality characteristic of authoritarianism (Adorno, Frenkel-Brunswik, Levinson, and Sanford, 1950), associated with a respect for authority, conformity to social rules, and a punitive response to deviants. Generalizing from this work, one would

expect insanity defense support to be related to attitudes toward other criminal justice topics, crime control or due process orientation, and authoritarianism. Fear of crime could also contribute to attitudes toward the insanity plea. Researchers have attempted to confirm that those who are more fearful of crime also have more punitive responses to criminals, but results have been equivocal (Stinchcombe, Adams, Heimer, Scheppele, Smith, and Taylor, 1980; Tyler and Weber, 1982).

A number of researchers have found significant relationships between certain demographic variables and reactions to criminals. Support for capital punishment, for instance, is greater among white men than among women and minorities (Flanagan, van Alstyne, and Gottfredson, 1982), and these differences have persisted for several decades. High-income people and those with low formal education are also more likely to support capital punishment (Stinchcombe et al., 1980). Blumstein and Cohen (1980) surveyed residents of one Pennsylvania community about appropriate sentences for a range of crimes and found that sentence severity varied significantly among demographic subgroups. Women, blacks, youths, the highly educated, and low-income people were all relatively lenient in their sentence recommendations. Consistent with this past work, Simon (1967) found that in jury simulation studies using insanity trials, black jurors were more likely than white jurors to find defendants Not Guilty by Reason of Insanity. Contrary to what had been expected, however, the college-educated were *less* likely to vote for insanity than those without college education. Simon's efforts to relate other demographic variables to insanity verdicts were unsuccessful.

Many of the demographic variables that affect reactions to crime also relate to general political and social liberalism. The demographic groups that are least punitive (women, blacks, the highly educated, and low-income people) tend also to be more liberal on other social and political issues. Stinchcombe et al. (1980) found that those white liberals who strongly endorsed civil liberties rights were also extremely lenient toward criminals. However, this subgroup of extremists accounted for most of the positive relationship the researchers found between civil libertarianism and leniency. Thus, most previous work would lead one to expect significant attitudinal and demographic predictors of insanity defense support.

#### REASONS FOR SUPPORT AND OPPOSITION TO THE INSANITY DEFENSE

In a search for reasons that people endorse the insanity defense or find it abhorrent, Vidmar and Miller's (1982) conceptual framework of social psychological motives underlying punishment responses is useful. To explain the urge to punish, Vidmar and Miller differentiate between the motivations of retribution and behavior control. Within their framework, retribution refers

to an essentially moral dimension and includes the reassertion of societal values and norms, whereas behavior control refers to more utilitarian concerns such as deterrence and isolation of the offender.

Both moral and utilitarian arguments are common in public debates over the insanity defense. Some supporters of the insanity defense argue that punishing the insane is wrong from a moral standpoint. By finding defendants Not Guilty by Reason of Insanity, we absolve them of blame and assert that they do not deserve punishment. Yet this precludes the opportunity for retribution. The failure to define a transgression as legally and morally wrong may disturb many law-abiding members of society. Interestingly, after Hinckley's insanity acquittal, some members of the public said that if Hinckley had been found Guilty But Insane they would not have been as disturbed by the verdict (ABC News, 1982). Apparently, Hinckley's successful insanity defense was alarming to them not because they had doubts about his mental state but rather because the "not guilty" label implied that his actions were not morally wrong. In contrast, others may oppose the insanity defense for strictly utilitarian reasons: because they believe that it provides a loophole for deceptive but perfectly sane lawbreakers to go free, or because it does not effectively isolate insane criminals.

These utilitarian concerns may be inflamed by misperceptions of the criminally insane and overestimates of the use of the insanity defense. For example, in one community survey, Steadman and Coccozza (1977) showed that people associated the criminally insane not with insanity acquittees or with defendants found incompetent to stand trial, but rather with defendants such as Charles Manson, who had been convicted of horrible murders and other violent crimes. Pasewark (1981) discovered that Wyoming residents drastically overestimated how many defendants employed the insanity plea and what proportion were successful. These misconceptions may heighten beliefs that the insanity defense is a dangerous feature of our law.

Finally, a unique dimension of the insanity plea is the participation of forensic psychiatrists in insanity trials. One survey of public opinion of the Hinckley trial indicated that people had very low confidence in the psychiatric evidence presented in the Hinckley trial and only modest faith in the abilities of psychiatrists to determine legal insanity (Hans and Slater, 1983). Furthermore, these views of forensic psychiatry were significant predictors of other opinions about the Hinckley trial, such as views of the fairness of the verdict. Beliefs about psychiatry differed for men and women and for older and younger subgroups, with women and the young most supportive of psychiatry in the courtroom (Slater and Hans, 1984). Attitudes toward the insanity plea may thus be significantly affected by views about psychiatry in the context of insanity trials.

## PURPOSES OF THE STUDY

The present study was conducted to discover the overall level of public support for the insanity defense and to explore in detail the beliefs and knowledge people hold about the insanity defense. Based on past work, generally negative views coupled with misinformation about the use of the insanity plea were expected. Another major purpose of the present research was to examine the attitudinal and demographic correlates of insanity defense support. Because the attitudinal characteristics of authoritarianism, liberalism, and fear of crime are often associated with views on criminal justice topics, they were predicted to relate to views of the insanity defense. Furthermore, demographic variables related to other criminal justice attitudes, such as gender, race, income, and education, were expected to be significantly related to insanity defense support. Generalizing from past research, it was predicted that women, blacks, low-income respondents, and the highly educated would be more supportive of the insanity defense. Finally, it was anticipated that perceptions of psychiatry in the courtroom would affect support for the insanity plea.

## METHODS

### RESPONDENTS

Respondents were 330 men and women from New Castle County, Delaware, who were contacted by telephone using random digit dialing techniques.<sup>1</sup> Household respondent selection was accomplished by the next-birthday method (Salmon and Nichols, 1983), in which interviewers asked to speak to the household member at least 18 years of age who had the next birthday.<sup>2</sup>

---

1. New Castle County encompasses the northern third of the state of Delaware and includes the urban center of Wilmington, the university community of Newark, and both suburban and rural/farming areas. New Castle County is the home of major corporations (such as Dupont, Hercules) as well as large automotive plants (Chrysler, General Motors). Census studies of voter registration, persons voting, and households with telephone service show that residents are within 3% of national averages. Delaware residents, on the whole, have a higher per capita income than the national average (Bureau of the Census, 1980).

2. Demographic characteristics of the sample were as follows: 42% male and 58% female; 86% white, 9% black, and 5% other nonwhite; 19% 18-24 years of age, 24% 25-34 years, 18% 35-44 years, 15% 45-54 years, 13% 55-64 years, and 11% 65 or more years of age. A total of 15.6% of the respondents did not have high school diplomas, 33.6% had only high school degrees, 23.4% had some college education, 15.9% were college graduates, and 11.5% had done graduate work beyond the college degree. Approximately even numbers of respondents were Protestant (40.2%) and Catholic (38.6%), while 2.2% of the sample was Jewish. One in every ten respondents (10.8%) stated some other religious preference and 8.2% indicated no religious preference. Household income was given as less than \$10,000 by 11.6% of the sample, between \$10,000 and \$20,000 by 21.5%, between \$20,000 and \$30,000 by 28.4%, between \$30,000 and \$40,000 by 17.2%, and as \$40,000 or

## PROCEDURE

Eight trained and paid interviewers conducted the survey on 11 weekday evenings during the time period July 25, 1983, through August 15, 1983, over a year after Hinckley had been found Not Guilty by Reason of Insanity. At least three call-backs were made to every working residential telephone number. A follow-up call was made to those who initially refused, and 39 of the 182 refusals (21%) were successfully converted to completed interviews. The overall completion rate was 70%.

## INSANITY DEFENSE ITEMS

Once the respondent agreed to participate, the interviewers began by stating: "As you probably know, the insanity defense can be used by defendants in criminal trials. They can plead Not Guilty by Reason of Insanity, arguing that because of their mental condition, they should not be held responsible for what they've done." Interviewers then read 20 different statements about the insanity defense, half of which were positive and half of which were negative. Respondents were asked to indicate whether they strongly agreed, agreed, disagreed, or strongly disagreed with each statement. The statements were generated from writing on the insanity defense from a variety of sources, including social science journals, law reviews, popular magazines, and letters to the editor. An attempt was made to represent the key arguments that were typically given by supporters and opponents of the insanity defense, and to reflect both moral and utilitarian concerns. Central ideas were presented in both positive and negative forms to counteract any potential agreement bias. Interviewers also asked respondents to estimate the frequency and consequences of the use of the insanity defense, and to give their views of psychiatry in insanity trials. The exact wording of questions relating to the insanity defense may be found in Appendix A. A few other questions about the insanity defense were asked of respondents, but will not be considered in the present paper.

---

more by 21.4% of the respondents. Demographic data collected by the United States Census Bureau (Bureau of the Census, 1980) allowed an estimation of the representativeness of the sample in all categories except religion. Lower-income respondents and those with less than a high school education were underrepresented in the sample compared to the census. For instance, 24% of the households in the census reported total income of less than \$10,000 compared to 11.6% of the sample respondents. Census data indicated that 26% of New Castle County residents who were at least 18 years of age had less than 4 years of high school education, while just 15.6% of the sample were not high school graduates. Women were overrepresented in the sample (58%) as compared to the census (53%), while blacks were underrepresented (9% of the sample but 15% of the census). Thus women, those with more years of formal education, and higher-income respondents were overrepresented in the sample compared to the census, while blacks were underrepresented.

## SOCIAL AND POLITICAL ATTITUDE ITEMS

More general questions about social and political attitudes were included on the questionnaire. Respondents were asked the extent of their agreement with six items from Altemeyer's (1981) Right Wing Authoritarianism Scale.<sup>3</sup> These six items were recoded so that high responses indicated high authoritarianism, and an authoritarianism scale was created by combining responses to the six questions (Authoritarianism Scale  $M = 17.07$ ;  $sd = 2.22$ ;  $Alpha = .59$ ).

Respondents were also given three items from the Legal Attitudes Questionnaire (Brodsky and Smitherman, 1983).<sup>4</sup> An additive scale measuring criminal justice attitudes was formed by combining responses to these three items and the response to a capital punishment item, with all items recoded so that higher responses indicated more punitive, anti-defendant attitudes (Criminal Justice Attitudes Scale  $M = 12.50$ ;  $sd = .54$ ;  $Alpha = .54$ ).

In addition, respondents were asked: "How safe do you feel, or would you feel, being out alone in your neighborhood *at night*: (1) very safe; (2) somewhat safe; (3) somewhat unsafe; or (4) very unsafe?" This question was used to measure fear of crime (Fear of Crime Scale  $M = 2.01$ ;  $sd = .92$ ). Political liberalism was assessed using a scale ranging from 1 indicating extremely conservative to 9 representing extremely liberal (Liberalism Scale  $M = 4.51$ ;  $sd = 2.05$ ). Demographic information was also solicited. The average length of an interview was 15.27 minutes.

## RESULTS

Respondents' opinions fall into three broad categories: support for the insanity defense, attitudes toward the insanity defense, and knowledge about the use of the insanity plea. The results to be reported for these categories include simple frequencies of respondents' answers as well as multiple regression and factor analyses. For ease of presentation, all the results relating to a

---

3. The authoritarianism items were: "One good way to teach certain people right from wrong is to give them a good stiff punishment when they get out of line"; "Obedience and respect for authority are the most important virtues children should learn"; "If a child starts becoming a little too unconventional, the parents should see to it that their child returns to the normal ways expected by society"; "Capital punishment should be abolished"; "Organizations like the army and the priesthood have a pretty unhealthy effect upon men because they require strict obedience of commands from supervisors"; and "Rules about being well-mannered and respectable are chains from the past which we should question very thoroughly before accepting."

4. These items were: "Too many guilty persons escape punishment because of legal technicalities"; "Illegally obtained evidence should not be admissible in court even if that evidence is the only way of obtaining a conviction"; and "In general, the courts deal too harshly with criminals."



specific category will be reported together, beginning with support for the insanity defense.

### OVERALL SUPPORT FOR THE INSANITY DEFENSE

The results presented in Table 1 reveal some dissatisfaction with the insanity defense but considerable variation in levels of support in response to different questions. Approximately half (48.9%) of the respondents believe

Table 1. Support for the Insanity Defense

Statement	% Strongly Agree	% Agree	% Disagree	% Strongly Disagree
Abolish Insanity Defense (Q1)	14.2	34.7	45.5	5.6
Reform Insanity Defense (Q2)	36.8	57.9	5.0	0.3
Insanity Defense Justified (Q3)	6.7	69.8	19.2	4.3
Insanity Defense Necessary (Q4)	5.6	58.0	30.2	6.2

that the insanity defense should be abolished, and almost all (94.7%) agree that the insanity defense needs a lot of reform. Yet three fourths (76.5%) of the sample maintain that the insanity defense is sometimes justified, and 6 of every 10 respondents (63.6%) grant that the insanity defense is a necessary part of our legal system. To form a scale measuring overall insanity defense support, the items were recoded so that higher numbers indicated greater support for the insanity plea. The scale was created by combining answers to the four questions (Insanity Defense Support Scale  $M = 9.62$ ;  $sd = 2.10$ ;  $Alpha = .70$ ).

### DEMOGRAPHIC AND ATTITUDINAL DETERMINANTS OF SUPPORT FOR THE INSANITY DEFENSE

To explore the demographic and attitudinal correlates of support for the insanity defense, a multiple regression analysis was carried out using the Insanity Defense Support Scale as the dependent variable. Since higher numbers on the scale indicate more support for the insanity defense, a positive relationship between a predictor variable and the scale shows that increases in the predictor variable are associated with increases in insanity defense support. Negative relationships show that decreases in the predictor variable are

Table 2. Multiple Regression Analysis of Support for the Insanity Defense

<u>Political-Social Attitudes</u>	
Fear of Crime	.00
Liberalism	-.05
Authoritarianism	-.16*
Criminal Justice Attitudes	-.11
<u>Demographic Variables</u>	
Age	.00
Gender	-.02
Race	-.05
Education	.14*
Income	-.22*
Protestant	.02
Catholic	.08
Other Religion	-.06
Multiple R <sup>2</sup>	.11*
F(12,215) = 2.13	

Entries are standardized regression coefficients.

\*p < .05

associated with greater insanity defense support. Table 2 displays the results of the multiple regression analysis.

There are three significant predictors of Insanity Defense Support: authoritarianism, education, and income. Consistent with expectations, high authoritarians show less support for the insanity defense.<sup>5</sup> In addition, those with higher education or lower income display greater support. This pattern is congruent with previous studies on attitudes toward crime which typically have found high education and low income to be associated with more liberal or defense-oriented responses.

The relationships of these three variables to insanity defense support are not extremely strong ones. The largest regression coefficient for any single demographic or attitudinal variable is .22; and the cumulative percent variance accounted for is a modest .11. While authoritarianism, education, and income have been associated with various criminal justice attitudes in other

5. The significant relationship between Authoritarianism and Insanity Defense Support is not due to the death penalty question included in the authoritarianism scale. A second multiple regression analysis using a revised authoritarianism scale from which the death penalty question had been deleted shows that the regression coefficient for authoritarianism is unchanged.

research projects, it should be noted that several variables that researchers have found to affect death penalty support (for example, race and gender) are not significant determinants of insanity defense support.

### ATTITUDES TOWARD THE INSANITY DEFENSE

Responses to 16 attitude questions (questions 5 through 20 in Appendix A) provide more detailed information about the public's beliefs and attitudes toward the insanity defense. As Table 3 shows, there is strong endorsement for treatment for the insane who are caught in the web of the law. Fully 96.1% of the sample say that insane defendants are entitled to treatment, and 65.8% agree that the insane should be treated rather than punished if they

Table 3. Attitudes Toward the Insanity Defense

Statement	% Strongly Agree	% Agree	% Disagree	% Strongly Disagree
Insane Entitled to Treatment (Q6)	13.7	82.4	3.0	0.9
Treat Rather Than Punish (Q11)	7.1	58.7	30.1	4.0
Should Punish Insane (Q14)	5.3	46.7	44.5	3.4
Punish Insane Like All (Q20)	7.4	48.0	42.4	2.2
Wrong to Punish Insane (Q5)	3.1	33.1	52.2	11.6
Punishment Doesn't Work on Insane (Q12)	2.9	51.4	41.0	4.8
Hard to Tell Sane from Insane (Q17)	23.8	67.2	7.7	1.2
NGRI* are Insane (Q7)	1.9	19.5	66.2	12.3
Insanity Plea a Loophole (Q13)	28.7	60.5	10.2	0.6
NGRI Released When Safe (Q8)	0.3	24.8	49.8	25.1
Allows Dangerous People on Streets (Q16)	22.7	66.0	11.2	0.0
Rich Person's Defense (Q19)	5.4	33.5	58.5	2.5
Sends Message to Criminals (Q15)	17.0	61.1	20.4	1.5
No Effect on Crime Rate (Q10)	2.6	20.6	64.0	12.9
Psychiatrists Should Testify (Q9)	18.6	72.6	8.2	0.6
Psychiatrists Say Anything (Q18)	13.7	41.6	41.6	3.2

\* Not Guilty by Reason of Insanity

commit crimes. However, a number of respondents expressed difficulty with this latter question, and reported spontaneously to the interviewers that they wanted to see insane lawbreakers both punished *and* treated. Indeed, in response to several other questions, at least half the sample indicate that the insane should receive punishment for their criminal behavior. A little over half (55.4%) agree that the insane should be punished just like everyone else when they break the law. One of every three respondents (36.2%) feels that it is actually wrong to punish insane people who break the law. Respondents in

this survey are about evenly split in their beliefs about the impact of punishment on the insane, with a bare majority (54.3%) agreeing that "punishment just doesn't work on the insane." Overall, then, there is close to universal support for treatment for the insane, but about half the sample also believe that the insane criminal should be punished as well.

Respondents in this sample show very little faith in courtroom and release procedures involving insanity defendants. Nine out of 10 (91.0%) agree that judges and juries have a hard time telling whether defendants are really sane or insane. Perhaps as a consequence of this belief, only a minority (21.4%) feel that most people found Not Guilty Reason of Insanity are really insane. Indeed, 9 out of every 10 respondents (89.2%) agree that the insanity defense is a loophole allowing too many guilty people to go free. Similar distrust about releasing Not Guilty by Reason of Insanity acquittees is revealed. Just one quarter of the sample (25.1%) are confident that people found Not Guilty by Reason of Insanity are only released when it is safe to do so. Most (88.7%) maintain instead that the insanity defense allows dangerous people out on the streets. The majority of respondents (61.1%) in this sample reject the view that "the insanity plea is mainly a rich person's defense." Overall, except for the majority's belief that the insanity defense does not necessarily discriminate between rich and poor, there is little confidence in courtroom and release procedures.

Respondents also express dismal views about more general effects of the insanity plea. Fully 78.1% of the sample maintain that the insanity plea sends a message to criminals that they can get away with crime. A similar percentage (76.9%) believe that the insanity defense does have an effect on the crime rate. From the total pattern of responses, one would infer that most people feel that the insanity plea causes an increase in the crime rate.

Despite the bad press that forensic psychiatrists have complained about since the Hinckley verdict, respondents in this study are on the whole moderately favorable to the use of psychiatric testimony in insanity trials. The vast majority (91.2%) think that psychiatrists should testify about a defendant's mental condition in insanity trials. About half (55.3%), however, believe that "if psychiatrists are paid enough, they will say anything about a defendant's sanity." While respondents have reservations about psychiatry in the courtroom, they nevertheless believe that psychiatrists should play a role in insanity trials.

#### FACTOR ANALYSIS OF ATTITUDES TOWARD THE INSANITY DEFENSE

To determine whether responses to the 16 different attitude questions (questions 5 through 20 in Appendix A) about the insanity defense could be reduced to a small number of distinct dimensions, an exploratory factor analysis was performed. The results of the factor analysis are presented in Table

4. Five factors with eigenvalues of 1.0 or more account for 60% of the total variance in the responses. The first factor, labeled "Punishment," accounts for half (49.4%) of the variation explained by the 5-factor model. Items stating that the insane should be punished when they commit crimes load strongly and positively on this factor, while statements about the wrongness or ineffectiveness of punishment show strong negative relationships. The second factor, labeled "Perceived Danger," accounts for another quarter (25.0%) of the variation explained by the 5 factors. The constellation of items on this factor relates to the perceived dangerous effects of having an insanity defense. Items loading strongly and positively on this factor include beliefs that the insanity defense is a loophole, that it sends a message to criminals, and that it lets dangerous people out on the streets. Significant negative item loadings are found for beliefs that those found Not Guilty by Reason of Insanity are really insane, that they are released only when safe, and that the insanity plea has no effect on the crime rate.

The final three factors account for a combined total of 25.6% of the variation in the 5-factor model. Factor 3, labeled "Perceived Injustice," appears to tap perceptions that the insanity defense is unfair, especially to poor defendants. The two items loading most strongly on this dimension both include references to finances ("Psychiatrists will say anything about a defendant's sanity if they are paid enough" and "The insanity defense is a rich person's defense"). Three other items loading on this factor involve the idea that the insanity plea is a loophole. The fourth factor, "Belief in Psychiatric Treatment," encompasses items stating that the insane are entitled to treatment, that they should be treated rather than punished, and that psychiatrists should testify in insanity trials. The fifth and final factor, "Belief in Effectiveness of Procedures," appears to tap attitudes about the efficacy of current procedures relating to insane defendants. The strongest loading is for the item, "Punishment won't work on the insane." Two other items that load on this factor are "Judges and juries have a hard time telling whether defendants are really sane or insane" and "I'm confident that people found Not Guilty by Reason of Insanity are only released when it's safe to do so." Apparently, those who feel that judges and juries are able to differentiate the sane from the insane also believe that those found Not Guilty by Reason of Insanity are released only when it is safe. Furthermore, they believe it is useless to punish the insane.

To measure the strength of the association of the five factors with overall support for the insanity defense, a multiple regression analysis used the five factors as the predictor variables for the scale measuring insanity defense support. Items were first recoded such that high scores indicated responses thought to be more favorable to the insanity defense. All 5 factors are significantly associated with overall support, with betas ranging from .28 to .13.

Table 4. Factor Analysis of Attitudes Toward the Insanity Defense

Question	Factor 1 Punishment	Factor 2 Perceived Danger	Factor 3 Perceived Injustice	Factor 4 Belief in Psychiatric Treatment	Factor 5 Belief in Effectiveness of Procedures
Should Punish Insane (Q14)	.80	.12	.19	-.03	.02
Punish Insane Like All (Q20)	.77	.05	.22	-.03	.22
Treat Rather Than Punish (Q11)	-.60	-.21	.12	.34	.05
Wrong to Punish Insane (Q5)	-.57	-.14	-.08	.06	.15
Punishment Doesn't Work on Insane (Q12)	-.56	.06	.09	-.02	.44
Sends Message to Criminals (Q15)	.10	.67	.32	.01	-.02
Insanity Plea a Loophole (Q13)	.14	.67	.42	-.06	.09
Allows Dangerous People on Streets (Q16)	.19	.57	.35	.03	-.08
NGRI* are Insane (Q7)	.06	-.48	-.02	.07	.08
No Effect on Crime Rate (Q10)	-.12	-.44	-.03	-.16	.02
NGRI Released when Safe (Q8)	-.12	-.37	.06	-.02	.26
Psychiatrists Say Anything (Q18)	.05	.12	.58	-.05	-.09
Rich Persons's Defense (Q19)	.09	.13	.48	-.04	.01
Psychiatrists Should Testify (Q9)	-.07	.15	-.04	.61	-.00
Insane Entitled to Treatment (Q6)	-.06	-.07	-.06	.41	-.15
Hard to Tell Sane From Insane (Q17)	-.01	.12	.10	.13	-.34

\* Not Guilty by Reason of Insanity

#### ESTIMATES OF USE OF THE INSANITY PLEA

Experts have estimated that, nationally, an extremely small percentage of criminal defendants plead Not Guilty by Reason of Insanity, and less than 1% of defendants charged with serious crimes are found Not Guilty by Reason of Insanity (ABC News, 1982; Pasewark, 1981). By any measure, the respondents in this study dramatically overestimate the use of the insanity

plea. Table 5 displays the relevant results. Respondents estimate that, of every 100 defendants who are charged with crimes, an average of 38.16 plead Not Guilty by Reason of Insanity. Respondents also believe that an average of 36.33 of every 100 defendants who employ the insanity defense are successful. Thus, the sample estimates that fully 14% ( $38.16 \times 36.33$ ) of criminal defendants are found Not Guilty by Reason of Insanity by the courts. Note the large standard deviations for the questions in Table 5. Their size indicates the tremendous variability in estimates given by study participants.

Respondents also were asked to indicate the number of Not Guilty by Reason of Insanity acquittees who go free immediately, the number who are sent to a mental hospital, and the length of the average mental hospital stay of the Not Guilty by Reason of Insanity acquittee. Most jurisdictions require that

**Table 5. Estimates of Use of the Insanity Defense**

Question	Mean	SD	Mode
1. Out of 100 defendants who are charged with crimes, how many do you think plead NGRI*? (Q21)	38.16	26.82	50.00
2. Out of every 100 defendants who plead insanity, how many are actually found NGRI by judges or juries? (Q22)	36.33	23.41	50.00
3. Out of 100 defendants found NGRI, how many go free immediately? (Q23)	25.57	28.22	0.00
4. Out of 100 defendants found NGRI, how many are sent to a mental hospital? (Q24)	50.60	32.75	50.00
5. If defendants are sent to a mental hospital, how long do they stay there, on the average? (Q25) (In months)	21.82	32.10	12.00

\* Not Guilty by Reason of Insanity

insanity acquittees be immediately hospitalized for psychiatric evaluation and diagnosis. The typical length of observation is 60 days. Subsequently, many acquittees continue to be hospitalized for treatment (Criss and Racine, 1980). Yet the respondents say that about a quarter (25.57%) of insanity acquittees are released immediately, and only half (50.60%) are sent to mental hospitals. This leaves a perplexing 25% of insanity acquittees unaccounted for in the public mind.

The respondents judge that the average mental hospital stay for an insanity acquittee is 21.82 months. This figure is remarkably similar to the statistic recently arrived at by a research team reporting census figures for mentally

disordered offenders in United States facilities (Steadman, Monahan, Hartstone, Davis, and Robbins, 1982). The research team estimated that Not Guilty by Reason of Insanity acquittees were held for an average of 23.2 months. In general, then, while the respondents' estimates of length of hospital stay are quite close to experts' judgments, the respondents consistently overestimate the use and success of the insanity plea, as did Wyoming residents (Pasewark, 1981).

What impact do these misconceptions about insanity defense use have? To answer this question, the five items relating to use of the insanity defense were employed as predictor variables in two separate multiple regression analyses, one for the scale measuring insanity defense support and the other for the "loophole" question so frequently asked in other surveys. One of the estimates, the number of insanity acquittees who go free immediately, is a significant predictor of overall support for the insanity plea. Those who estimate that larger numbers of insanity acquittees go free immediately are less supportive of the insanity defense (Beta =  $-.19$ ,  $p < .05$ ). Both estimates of the number of defendants pleading Not Guilty by Reason of Insanity and the number of insanity acquittees who go free immediately are significant predictors of views that the insanity defense is a loophole (Betas =  $-.21$  and  $-.16$ , respectively; both  $p$ 's  $< .05$ ).

## DISCUSSION

The results of this Delaware survey converge with previously collected data showing negativity toward the insanity defense along with misconceptions about its use. This study goes beyond other work, however, by providing a detailed and differentiated picture of people's views of the insanity defense. There are indeed many respondents—a little less than half the sample—who want the insanity defense abolished, but they are balanced by an equal number who want to see it retained. Furthermore, a majority think the insanity defense is justified in at least some instances and believe that it is a necessary part of the legal system. Desires for reform rather than abolition characterize the majority of the respondents. Public reaction to trials like Hinckley's, along with prior studies that have asked only the "loophole" question, may have given a shallow and more pessimistic view of public support for the insanity defense than is warranted.

The overall pattern of people's attitudes toward the insanity plea indicates that people dislike the insanity defense for both retributive and utilitarian reasons. Many want insane lawbreakers punished just like other criminals and do not agree that punishing the insane is morally wrong. Most believe that procedures now in place are largely ineffective in protecting them from insane criminals. As noted earlier, retributive and utilitarian dimensions have



been found to underlie punishment reactions in other work (Tyler and Weber, 1982; Vidmar and Miller, 1982).

While people differ in the extent to which they recognize the validity of the insanity defense, almost all the respondents share concerns over the processing of insanity defense claims. Respondents do not think most people found Not Guilty by Reason of Insanity are really insane, a belief that may be linked to their overwhelming agreement that the insanity plea functions as a loophole that allows the guilty to go free. There is considerable concern that dangerous individuals are released as a result of the insanity plea. In the public imagination, these dangerous individuals may be of two sorts: the perfectly sane criminal who pleads insanity to get off the hook, and the truly insane lawbreaker who, while not blameworthy, is still dangerous to the public. However, it is clear from respondents' judgments of the use and success of the insanity plea that many vastly overestimate those who are absolved of criminal responsibility or who go free by a defense of insanity. Furthermore, their estimates of the number of defendants who plead insanity, the number of insanity acquittees who go free, and the perceived danger of the insanity defense are all related to support for the insanity defense.

Whether dislike for the insanity defense leads to these misconceptions or whether the misconceptions create dislike for the insanity defense is unknown. But the fact that the relationship exists suggests that educating people about the functioning and consequences of insanity trials, verdicts, and postverdict treatment of insanity acquittees could in time lead to more positive attitudes toward the plea, particularly for those who do not already hold strong attitudes. Indeed, Jeffrey and Pasewark (1983) have recently demonstrated that Wyoming students and community residents were less likely to agree that the insanity plea was used too much after being correctly informed of the small number of Wyoming defendants who employed and were successful with an insanity plea.

Also worth noting in this context are research findings on the impact of information on attitudes toward the death penalty. Some researchers have discovered that informing people about the failure of the death penalty as a deterrent caused some moderate supporters to change their attitudes (Sarat and Vidmar, 1976; Vidmar and Dittenhoffer, 1981). However, other death penalty researchers maintain that for many people, support for capital punishment is primarily a symbolic attitude which is likely to be resistant to change even in the face of disconfirming evidence (Ellsworth and Ross, 1983; Tyler and Weber, 1982). If insanity defense support constitutes such a symbolic attitude, one should expect that providing accurate information about the use of the insanity plea will have only a minimal impact overall, and will primarily affect those whose attitudes are not strongly held.

In the sample in this study, the strong retributive sentiment to punish the insane criminal is coupled with near universal desire for treatment for insane

defendants. A preference for a combination of punishment and treatment for insanity defendants has been found elsewhere (Hans and Slater, 1983; Simon, 1967). For instance, consider the following quotations from three of the Hinckley jurors who testified before a Senate subcommittee on criminal law (U.S. Congress, 1982): "If a person is mentally ill, have them get the correct treatment and then also have them punished for their crime" (p. 200); "If there is something wrong with [criminals] treat them but make them pay" (p. 200); and "[The law] should be changed in some way where the defendant gets mental help, gets help enough that he is not harmful to himself and society, and then be punished for what he has done wrong" (p. 165). This last quote in particular suggests that desires for treatment do not always represent expressions of humanitarianism, but rather may reflect more utilitarian concerns.

A preference for treatment and punishment is, of course, at odds with the premise of the legal system that defendants should either be treated if legally insane or punished if legally guilty. The dual desire to treat and punish may in part explain the rising popularity of the Guilty But Mentally Ill verdict option in insanity cases. It has recently been introduced in a number of states such as Michigan and Delaware. If a defendant who raises an insanity defense does not convince the judge or jury that he or she should be found Not Guilty by Reason of Insanity, the decision maker may under some factual circumstances find the defendant Guilty But Mentally Ill. The Guilty But Mentally Ill option provides for a combination of psychiatric treatment and incarceration. The fact that there appears to be a public preference for both treatment and punishment could mean that juries will select Guilty But Mentally Ill as a compromise verdict even when the facts of the case would support a Not Guilty by Reason of Insanity or Guilty verdict. The little information available on the impact of a Guilty But Mentally Ill verdict alternative indicates that this verdict is not selected very often (Smith and Hall, 1982). However, these results do not address the issue of the possible role of public preferences for treatment and punishment nor of the appropriateness of the jury verdicts. A study with jury simulation methodology would be better able to examine these concerns.

In addition to desires for retribution and concerns about the dangers of the insanity defense, beliefs in psychiatric treatment for insane defendants are an important component of insanity defense support. This pattern raises the question of the origin of such beliefs about psychiatry. One would expect that those respondents with greater knowledge or personal experiences with psychiatry, psychology, and mental illness might have distinctive attitudes toward psychiatry. These in turn could feed into insanity defense attitudes. However, Simon (1967: 126-129) found no association between mock jurors' willingness to render Not Guilty by Reason of Insanity verdicts and their

knowledge or views of psychiatry. Further research should explore the relationship between knowledge of and experiences with psychiatry and views of the insanity defense.

The multiple regression analysis provides some insights into the possible origins and determinants of insanity defense attitudes. Consistent with expectations, a number of the variables that researchers have found to be related to other criminal justice attitudes—authoritarianism, income, and education—are significantly associated with attitudes toward the insanity defense. This overlap in the significant determinants of criminal justice attitudes tends to support other researchers' views that reactions toward the insanity defense are part of a cluster of crime and justice attitudes (Fitzgerald and Ellsworth, 1984). However, in this study, several variables related to support for the death penalty or criminal sentencing (for example, race, gender, religion) are not significantly associated with support for the insanity defense, suggesting that there are some distinctive sources of support for different criminal justice attitudes. More extensive study of the contributions of various factors to different criminal justice attitudes could begin to explore their interrelationships.

The data presented in this paper provide information about why the public fails to fully support the insanity defense. These data may also help to explain why juries are notoriously reluctant to grant insanity pleas. Converging evidence on this point is available from a recent jury simulation study by Ellsworth, Bukaty, Cowan, and Thompson (1984). These researchers compared the judgments about insanity cases of individuals who did or did not have scruples against the death penalty. Subjects who had scruples were more likely to have a due process orientation, while those without scruples were characterized by a crime-control ideology. Those with scruples both believed that a greater number of insanity defendants were really insane, and were more likely to find schizophrenic defendants Not Guilty by Reason of Insanity, compared to subjects without scruples. This pattern of results suggests that the attitudes toward crime and the insanity defense explored in this paper are reflected in jury behavior. However, a caveat is in order. While there is public dislike for the insanity defense at an abstract level, when jurors are confronted with concrete details of an insanity trial firsthand, they may well pay primary attention to the evidence and legal instructions rather than their own sentiments in reaching a verdict. The Hinckley jurors, for example, expressed a good deal of negativity toward the insanity defense (United States Congress, 1982) yet nevertheless found Hinckley Not Guilty by Reason of Insanity.

Independent of its effect on jury behavior, public opinion about the insanity defense is important in its own right. Many recent changes in insanity defense laws, including restrictions, introduction of Guilty But Mentally Ill provisions, and outright abolition, have been precipitated at least in part by

negative public opinion about the Hinckley verdict and the insanity plea (Caplan, 1984). Considering that public sentiment is the impetus for legal change, the public opinion data reported here are troubling in some respects. Many respondents feel that even those who are truly insane should be punished for criminal behavior, a desire that is incongruent with our legal system's special treatment for insane defendants. Furthermore, as in other studies, the respondents in this study prove to be misinformed about the extensiveness and consequences of the insanity plea. Further examination of the basis of insanity defense support is warranted. In particular, the extent to which opposition to the insanity defense rests on false perceptions should be explored. Until such studies can be carried out, one should heed the advice of those (for example, Bird, 1984) who have cautioned against unquestioning acceptance of public opinion in the formation of laws and legal change.

## REFERENCES

- ABC News  
1982 Insanity plea on trial. Nightline: June 22.
- Adorno, Theodor, Else Frenkel-Brunswik, Daniel Levinson, and R. Nevitt Sanford  
1950 The Authoritarian Personality. New York: Harper.
- Altemeyer, Bob  
1981 Right-wing Authoritarianism. Winnipeg: University of Manitoba Press.
- Bird, Rose E.  
1984 The rule of law in an instant society: Implications for law and psychology. *American Psychologist* 39: 158-162.
- Blumstein, Alfred and Jacqueline Cohen  
1980 Sentencing of convicted offenders: An analysis of the public's view. *Law and Society Review* 14: 223-261.
- Brodsky, Stanley L. and H. O'Neal Smitherman  
1983 Handbook of Scales for Research in Crime and Delinquency. New York: Plenum.
- Bronson, Edward J.  
1970 On the conviction-proneness and representativeness of the death-qualified jury: An empirical study of Colorado veniremen. *University of Colorado Law Review* 42: 1-32.
- Bureau of the Census  
1980 Statistical Abstract of the United States. Washington, D.C.: U.S. Department of Commerce.
- Caplan, Lincoln  
1984 Annals of law: The insanity defense. *The New Yorker* (July 2): 45-46, 48-52, 54-78.

- Criss, Michael L. and D. Robert Racine  
1980 Impact of change in legal standard for those adjudicated not guilty by reason of insanity 1975-1979. *Bulletin of the American Academy of Psychiatry and Law* 8: 261-271.
- Ellsworth, Phoebe C., Raymond M. Bukaty, Claudia L. Cowan, and William C. Thompson  
1984 The death-qualified jury and the defense of insanity. *Law and Human Behavior* 8: 81-93.
- Ellsworth, Phoebe C. and Lee Ross  
1983 Public opinion and capital punishment: A close examination of the views of abolitionists and retentionists. *Crime and Delinquency* 29: 116-169.
- Fitzgerald, Robert and Phoebe C. Ellsworth  
1984 Due process and crime control: The impact of death qualification on jury attitudes. *Law and Human Behavior* 8: 31-51.
- Flanagan, Timothy J., David J. van Alstyne, and Michael R. Gottfredson (eds.)  
1982 *Sourcebook of Criminal Justice Statistics-1981*. U.S. Department of Justice, Bureau of Justice Statistics. Washington, D.C.: U.S. Government Printing Office.
- Hans, Valerie P. and Dan Slater  
1983 John Hinckley, Jr. and the insanity defense: The public's verdict. *Public Opinion Quarterly* 47: 202-212.
- Harris, Louis and Associates  
1971 Study No. 2016 (unpublished). New York: NAACP Legal Defense Fund.
- Jeffrey, Richard W. and Richard A. Pasewark  
1983 Altering opinions about the insanity plea. *Journal of Psychiatry and Law* 11: 29-40.
- Moran, Richard  
1981 *Knowing Right from Wrong: The Insanity Defense of Daniel McNaughtan*. New York: Free Press.
- Packer, Herbert L.  
1968 *The Limits of the Criminal Sanction*. Palo Alto: Stanford University Press.
- Page, Benjamin I. and Robert Y. Shapiro  
1983 Effects of public opinion on policy. *American Political Science Review* 77: 175-190.
- Pasewark, Richard A.  
1981 Insanity plea: A review of the research literature. *Journal of Psychiatry and Law* 9: 357-401.
- Rosenberg, Charles E.  
1968 *The Trial of the Assassin Guiteau*. Chicago: University of Chicago Press.
- Salmon, Charles T. and John S. Nichols  
1983 The next birthday method of respondent selection. *Public Opinion Quarterly* 47: 270-276.
- Sarat, Austin  
1977 Studying American legal culture: An assessment of survey evidence. *Law and Society Review* 11: 427-488.

- Sarat, Austin and Neil Vidmar  
1976 Public opinion, the death penalty, and the Eighth Amendment: Testing the Marshall hypothesis. *Wisconsin Law Review*: 171-206.
- Simon, Rita J.  
1967 *The Jury and the Defense of Insanity*. Boston: Little, Brown.
- Slater, Dan and Valerie P. Hans  
1984 Public opinion of forensic psychiatry following the Hinckley verdict. *American Journal of Psychiatry* 141: 675-679.
- Smith, Gene A. and James A. Hall  
1982 Evaluating Michigan's guilty but mentally ill verdict: An empirical study. *University of Michigan Journal of Law Reform* 16: 77-114.
- Steadman, Henry J. and Joseph J. Cocozza  
1977 Selective reporting and the public's misperceptions of the criminally insane. *Public Opinion Quarterly* 41: 523-533.
- Steadman, Henry J., John Monahan, Eliot Hartstone, Sharon K. Davis, and Pamela C. Robbins  
1982 Mentally disordered offenders: A national survey of patients and facilities. *Law and Human Behavior* 6: 31-38.
- Stinchcombe, Arthur, Rebecca Adams, Carol Heimer, Kim L. Scheppele, Tom Smith, and D. Garth Taylor  
1980 *Crime and Punishment: Changing Attitudes in America*. San Francisco: Jossey-Bass.
- Tyler, Tom R. and Renee Weber  
1982 Support for the death penalty—Instrumental response to crime, or symbolic attitude? *Law and Society Review* 17: 21-45.
- United States Congress  
1982 Limiting the insanity defense. Hearing before the Subcommittee on Criminal Law of the Committee on the Judiciary. United States Senate, 97th Congress, 2nd Session. (Testimony by the Hinckley jurors: June 24, pp. 155-201.)
- Vidmar, Neil and Tony Dittenhoffer  
1981 Informed public opinion and death penalty attitudes. *Canadian Journal of Criminology* 23: 43-56.
- Vidmar, Neil and Dale Miller  
1982 Social psychological processes underlying attitudes toward legal punishment. *Law and Society Review* 14: 565-602.

Valerie P. Hans is an Associate Professor in the Division of Criminal Justice and Department of Psychology at the University of Delaware, where she studies jury decision making and public attitudes toward the courts. She coauthored *Judging the Jury*, which was recently published.

## Appendix A

1. The insanity defense should be abolished.
2. The insanity defense needs a lot of reform.
3. The insanity defense is sometimes justified.
4. The insanity defense is a necessary part of our legal system.
5. It is wrong to punish insane people who break the law.
6. Insane defendants are entitled to treatment.
7. Most people found Not Guilty by Reason of Insanity are really insane.
8. I'm confident that people found Not Guilty by Reason of Insanity are only released when it's safe to do so.
9. Psychiatrists should testify about a defendant's mental condition in insanity trials.
10. The insanity defense doesn't affect the crime rate.
11. The insane should be treated rather than punished if they commit crime.
12. Punishment just doesn't work on the insane.
13. The insanity plea is a loophole that allows too many guilty people to go free.
14. Even if people are insane, we should punish them if they break the law.
15. The insanity defense sends a message to criminals that they can get away with crime.
16. The insanity defense allows dangerous people out on the streets.
17. Judges and juries have a hard time telling whether defendants are really sane or insane.
18. If psychiatrists are paid enough, they will say anything about a defendant's sanity.
19. The insanity plea is mainly a rich person's defense.
20. Insane people should be punished for their crimes just like everyone else.
21. First of all, when defendants are charged with a crime, they can decide to plead Not Guilty by Reason of Insanity. Out of 100 defendants who are charged with crimes, how many do you think plead Not Guilty by Reason of Insanity?
22. Now, when defendants plead Not Guilty by Reason of Insanity at their trials, a judge or a jury has to decide whether or not the defendants are indeed Not Guilty by Reason of Insanity. Out of every 100 defendants who plead insanity, how many are actually found Not Guilty by Reason of Insanity by judges or juries?
23. Out of every 100 defendants found Not Guilty by Reason of Insanity, how many go free immediately?
24. How many are sent to a mental hospital?
25. If defendants are sent to a mental hospital, how long do they stay there, on the average?