# The Insanity Defense – Not a Solid Strategy

## 1. Introduction

A common misconception is that the insanity defense is often argued to be a "free out of jail" card. However, this argument is questionable itself. It is often ignored that in order to apply this defense, it is subjected to numerous tests that will determine the validity of an insanity defense. Due to these tests, it becomes very difficult to prove insanity. Additionally, they also eliminate the argument that one could pretend insanity to avoid punishment by the court. The defense was established with the thought in mind that it would be unjust to penalize an individual with a mental illness the same way an individual would be punished who does not have a mental illness. Other misbeliefs, such as that the defendant would be set free, gives the defense an unjustified reputation. Society and the media often portray that the insanity defense is a method that is used in order to corrupt the legal system. However, in actuality it is successful in only a fraction of the one percent of felony cases in which this defense is raised and as such cannot be considered a solid strategy in avoiding incarceration.

## 2. Scope of this Paper

This paper will discuss that the insanity defense is not a trouble-free action plan when attempting to avoid prosecution. Since the media often covers matters involving the insanity defense, it has become a subject that is widely discussed. Insanity as a legal term itself cannot be compared to the colloquial meaning of insanity. Neither can it be compared to the medical definition of insanity. In order for an insanity defense to be considered by the court, the defendant must first undergo a psychological evaluation. Additionally, depending on in which

state the defendant lives, a standard will be applied that will determine if he or she is considered legally insane. Due to the misconception that such a defense can be easily pleaded, this paper will also investigate successful malingering. Finally, statistics will be provided to display that the insanity defense has a very low successful rate. This paper will not focus on death penalty cases in which the insanity defense was used, as the defense can be applied to a variety of criminal charges.

## 3. Body of the Research Paper

### 3.1. Insanity as a Legal Term

It is often believed that insanity is a psychological term. However, this is incorrect as insanity is actually a legal term. A suspect could possess a mental illness or may be even psychotic; yet, that doesn't mean that it corresponds to the legal criteria of insanity. One should also note that the legal definition of insanity is different depending on from which jurisdiction the charge arose. Traditionally, the United States of America holds that the insanity is "a defense asserted by an accused in a criminal prosecution to avoid liability for the commission of a crime because, at the time of the crime, the person did not appreciate the nature or quality or wrongfulness of the acts." [FN1] This means that an individual who is not conscious of their acts or the meaning of their behavior, shouldn't be held legally responsible. Pursuant to the rule in the opinion of Durham v. United States [FN2], an individual whose criminal "acts stem from and are the product of a mental disease or defect as those terms are used herein, moral blame shall not attach, and hence there will not be criminal responsibility." (Durham v. United States). Consequently, the determination of someone's guilt which usually follows with a penalty, only occurs if an accused had the free will to commit the crime as well as the intent to harm.

The legal definition of insanity does not concur with the medical definition of insanity. This is because it only involves the perpetrator's understanding of the act being wrong and the capability of distinguishing right from wrong. For example, a murderer who kills women because their cat told them to do so and understands that killing these women was against the law, may be considered medically insane; however, in the eyes of the law he would not qualify as legally insane. Thus, the mental capacity to differentiate right from wrong is the key factor in determining whether a defendant will be found insane according to the laws of our country.

### 3.2. Psychological Evaluation

When a defendant applies the insanity defense, a forensic psychologist will perform a psychological evaluation, which will discover whether the defendant is malingering in order to escape a guilty verdict. According to the recent case of United States of America v. Joseph Conrad Goode [FN3], "a psychiatric and/or psychological examination and evaluation [needs to be carried out] pursuant to 18 U.S.C. § 4247(b) to determine whether the defendant was insane at the time of the offense charged." (US v. Goode) One way to examine and evaluate whether a defendant is pretending to be insane is the M-FAST (Miller Forensic Assessment of Symptoms Test), which is a preliminary, 10-minute test, and consists of twenty-five questions. These questions combine false and actual symptoms of a mental illness and, therefore, "it's almost impossible to pick the right combinations if you're not mentally ill or a highly trained forensic psychologist." [FN4] Consequently, this means that an insanity defense can't be imitated with the intention to deceive and escape a guilty verdict, unless the defendant has been truly insane at the time he committed the crime.

### 3.3. The Legal Standards for Insanity

In the United States of America, every state, including the District of Columbia, has its own resolution on applying the standard of finding a perpetrator legally insane. Overall, the standards that are being employed either follow the M'Naghten rule or variations of the Model Standard of the American Law Institution (A.L.I.), which is also called the Brawner Rule.

#### 3.3.1. M'Naghten Rule

Approximately half of the states accept the M'Naghten Rule. This rule is named after a British case from 1843, in which the defendant, Daniel M'Naghten, attempted to assassinate England's prime minister Sir Robert Peel. M'Naghten believed that the prime minister wanted to murder him. Therefore, he proceeded in trying to shoot the prime minister but instead killed his secretary. During the course of the trial, medical experts gave testimonies that M'Naghten was psychotic. So, the Court held that M'Naghten was not guilty by reason of insanity. In Queen v. M'Naghten [FN5], the Court established that a defendant is considered legally insane if "at the time of the committing of the act, the party accused was labouring under such a defect of reason, from a disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong." (Queen v M'Naghten)

#### 3.3.2. Brawner Rule

Another standard stems from the American Law Institute. This rule is also known as the Brawner Rule and is named after United States v. Brawner [FN6], which states that "a person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his

conduct or to conform his conduct to the requirements of the law." (United States v. Brawner). Looking at the wording of the Brawner Rule, it becomes obvious that a mental disease or defect does not need to display appearance of mental illness due to recurrent unlawful acts throughout a defendant's life.

### 3.4. The Misconception of the Insanity Defense

Society often has the perception that the insanity defense is one that can be easily pleaded. However, it is actually a defense that is rarely entered as it is very difficult to prove. As seen above, there are various definitions of insanity. Reason for that is the fact that the legal system nor mental health professionals are unable to agree on a single meaning. One state may feel that the M'Naghten Rule is too difficult to prove, while another state may find the Brawner Rule too lenient.

The faulty understanding of the insanity defense ignores the fact that defendants who are found not guilty by reason of insanity are not automatically given their freedom back. The truth is that in the majority of these cases, the defendant is confined to a mental institution. There, the defendant often spends more time than if he or she would have been convicted and sent to prison.

### 3.5. Successful Malingering

In order for the defense to work, the defendant has to admit that the crime was committed but that he or she did not commit it in actuality. Instead of disagreeing with the facts that are given, the defendant simply claims to be innocent due to mental incapacity. This means that the trial no longer focuses on the actual case facts and the harm that was caused. Instead, it begins to focus on the defendant's state of mind. One would not deem this as fair considering the

seriousness of some crimes that may be ignored when a defendant claims to be insane. This factor causes a lot of dispute over the insanity defense as it creates a great advantage for the defendant since it provides the defendant with more time to avoid incarceration.

One of the greatest malingerers of all time was the mafia chieftain Vincent Gigante. He was able to delay his trial for half a dozen years by claiming to be insane and misleading several psychologists. In US v. Gigante [FN7], the court found that "while psychological testing has improved, there is, as of now, no reliable judicial or medical test or combination of tests that can, in a case such as the instant one, rule out malingering without full consideration of all the relevant history and the exercise of judgment." (US v. Gigante). Looking at the fact that Gigante was able to malinger and to avoid being convicted for such a long time is of concern. How can we be certain that there haven't been more perpetrators that were able to malinger and actually did escape prison? One must keep in mind that the moment Vincent Gigante claimed insanity, the case no longer focused on the fact that he was charged with the conspiracy of murder and racketeering, but whether or not he was insane. The time that it took to prove that he was not insane, had given him the "freedom" he was looking for as he was able to avoid prosecution for his crimes for several years. When acknowledging that there is a possibility for a perpetrator to pretend being insane and successfully avoid prosecution for a period of time, then the insanity defense is deemed as a "free out of jail"card.

### 3.6. Success Rate

Although there exists a history of the insanity defense being abused, one must be aware that this does not mean a defendant will always be successful in applying it. Due to the great dispute in the media of the insanity defense being applied, an impression has been created that it

must be widely used. However, the truth is that it is used in less than one percent of all court cases. Also, when it is being used "the overall success rate of insanity pleas is about 0.26% and has remained constant for several years." [FN8] In spite of the fact that a defendant does not have to have a history of mental incapacity in order to claim insanity, ninety percent of the defendants whose cases were successful had been previously diagnosed with a mental illness. As a result, it becomes obvious that trying to malinger insanity would most likely fail.

## 4. Conclusion

When considering the legal definition of the insanity defense, the psychological evaluation process, the M'Naghten Rule, the Brawner Rule, and the statistics of the insanity defense, it becomes very evident that this defense cannot be regarded as a firm action plan to keep a defendant out of prison. Even when a defendant has suffered from mental incapacity, it does not automatically mean that he or she will be viewed as legally insane in the eye of the law. The insanity defense is a difficult defense to be applied, which is one of the reasons why its utilization and success rate is very low. Predominantly, this defense cannot be assessed as an undemanding defense. An attorney and his client who are willing to apply this defense will have to go through many hurdles before this defense will be successful in their case. Therefore, the application of it is indeed not a "free out of jail" card.

**Footnotes**

FN1. "Insanity Defense." The Free Dictionary. N.p., n.d. Accessed May 22, 2016. http://legal-dictionary.thefreedictionary.com/Insanity+Defense.

FN2. *Durham v. United States*, 214 F.2d 862 (D.C. Cir. 1954).

FN3. *US v. Goode*, No. 16-M-53S (Sr) (W.D.N.Y. May 12, 2016).

FN4. Starr, Douglas. "Can You Fake Mental Illness." Slate. N.p., 7 Aug. 2012. Accessed May 22, 2016. http://www.slate.com/articles/health_and_science/science/2012/08/faking_insanity_forensic_psychologists_detect_signs_of_malingering_.html.

FN5. *Queen v. M'Naghten*, 8 Eng. Rep. 718 (1843)

FN6. *United States v. Brawner*, 471 F.2d 969 (D.C. Cir. 1972).

FN7. *US v. Gigante*, 996 F. Supp. 194 (E.D.N.Y. 1998).

FN8. "20 Gripping Insanity Plea Statistics." Brandon Gaille. N.p., 28 July 2014. Accessed May 22, 2016. http://brandongaille.com/20-insanity-plea-statistics/.