Why Liberals Should Hate the Insanity Defense

"It's the fallacy of your legal system," said Gary Trapnell, a bank robber who not long afterwards would hijack a TWA 707 flying from Los Angeles to New York. "Either the man falls under this antiquated psychiatric scheme of things, or he doesn't." Trapnell was talking about the insanity defense, which he had used with great acumen to avoid jail for his innumerable crimes over the years. "I have no right to be on the streets," he added.

The insanity defense has been much in the news of late. We read cases such as that of the Michigan ex-convict who pleaded insanity after seven killings, won an acquittal, but returned to the streets two months later when he was declared sane. In a month, he was charged with murdering his wife. Or take the 23-year-old Connecticut man who left the state hospital three months after an insanity acquittal for stabbing a man. The acquittee's mother pleaded to have him recommitted, but to no avail. Shortly thereafter, he repeatedly stabbed a man whose home he was burglarizing. Once again he was declared not guilty by reason of insanity.

It sounds like the warmup for a right-wing tirade against the coddlers of criminals. But the much publicized trials of John Hinckley and others have cast the issue in a somewhat different light. In a strange way, by jumbling liberal and conservative loyalties, these have made debate on the subject not only necessary, but possible as well. Take the "Twinkie Defense," which enabled former San Francisco City Supervisor Dan White to get off with a light eight-year sentence after shooting, with obvious deliberation, San Francisco Mayor George Moscone and his city administrator, Harvey Milk. As Milk was both liberal and openly homosexual, thousands who probably never before identified with the cause of law and order were outraged that this brutal act of (at least symbolic) homophobia should go lightly punished. John Hinckley, for his part, was the son of a wealthy upper-middle-class family, and not the sort of fellow who evoked sympathies usually reserved for the downtrodden. His trial prompted even The Nation, which rarely concedes the cops an inch, to suggest some mild reforms in the insanity defense.

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BY JONATHAN ROWE
In the wake of the Hinckley trial, a number of reforms have been suggested. The Nation, along with many others, advocates that we put the burden of proof upon the defendant. (In the Hinckley case, the prosecutors actually had to prove him sane, which is no mean feat.) Others have called for a tighter legal definition of insanity itself. Such changes might be helpful, but they amount to fiddling. The only way to resolve the injustices of the insanity defense is to do away with it entirely. This may sound cruel, but it is not. Nor is it a proposal to “lock ’em up and throw away the key.” To the contrary, the injustices of this defense go much deeper than a few criminals getting off the hook. They go close to the core of our current practices regarding punishment and correction. Getting rid of the insanity defense would help to make us confront the need for humane reform in the way we sentence and confine those who break the law.

Such a deal

The insanity defense looms a good deal larger in our minds than it does in actual life. Somewhere between 1,000 and 2,000 criminals make use of it each year, or about 1 percent to 2 percent of felonies that go to trial (over 90 percent in many jurisdictions are plea-bargained before trial). The issue is important not because it arises frequently, but because it tends to arise in the most serious crimes: think of Son of Sam, for example, or the Hillside Strangler. Such people tend to be dangerous, and their trials attract so much publicity that they put our entire system of justice to a test. What single event of the last two years affected your view of the criminal justice system more than the Hinckley trial did?

It is hard to read about such trials without getting the impression that something is fundamentally wrong. Take the case of Robert H. Torsney, the New York City policeman who shot a 15-year-old black youth in the head from two feet away in November of 1978. In an article in the *Journal of Legal Medicine*, Abraham Halpern, director of psychiatry at the United Hospital, Port Chester, New York, tells the case in salient detail.

At first, Torsney’s lawyer resisted any suggestion of psychological observation or treatment for his client. Such treatment for an officer who was only acting in the line of duty was “worse than putting him in the electric chair,” the attorney said. As public indignation rose, however, and acquittal became more and more unlikely, the attorney decided that Torsney might have deep-seated psychological problems after all. At a hearing on Torsney’s insanity defense, his paid psychiatrist explained the policeman’s errant account of the incident, which was contradicted by other witnesses as an “involuntary retrospective falsification.” Not a lie, mind you. The psychiatrist went on to explain that Torsney shot the kid because of an “organic psychomotor seizure” arising from a “mental defect.”

The jury found Torsney not guilty by reason of insanity. After a year, however, the staff at the mental hospital recommended that he be released because they could find nothing wrong with him. When the lower court balked—such hasty releases are unseemly if nothing else—Torsney’s attorney indignantly filed an appeal. “It can’t be seriously argued,” he wrote, “that the record in this case establishes that Mr. Torsney is either seriously mentally ill or presently dangerous. At most he may be said to have a personality flaw, which certainly does not distinguish him from the rest of society.”

What really distinguished Torsney, it seemed, was that he had shot somebody and deserved to be punished. That such simple observations can become so obscured is largely the result of the wholesale invasion of psychiatry into the courtroom that has been underway since the 1950s. Back then, the stars of psychiatry and psychoactive drugs were shining bright. To many, we were on the threshold of a new age, in which psychiatrists could measure such things as responsibility and mental disease down to minute calibrations and effect cures with the precision of engineers. If only we could let these new wizards into the courtroom, to bring their expertise to bear upon the processes of justice.

The main opening came in 1954, when federal appeals Judge David Bazelon, of the Washington, D.C., District Court, declared the so-called “Durham Rule.” Under the old “M’Naughton Rule,” a criminal could be judged insane only if he or she didn’t know right from wrong. This crimped the psychiatrists somewhat, since they tend to shrug their shoulders on questions of values. In the *Durham* case Judge Bazelon set them free, declaring that henceforth in the District of Columbia an accused was not criminally responsible “if his unlawful act was the product of mental disease or defect.” Bazelon received a special award from the American Psychiatric Association, but not everyone was that enthused. The American Law Institute (ALI) produced a sort of compromise, declaring that a person wouldn’t be responsible for a misdeed if he couldn’t appreciate the wrongfulness of it or if he “lacked a substantial capacity... to con-
form his conduct to the requirements of the law? Though somewhat stiffer on paper, this ALI rule didn't vary from the Durham Rule in practice at all. Adopted by a majority of the states, its various permutations have given the psychiatrists virtual free rein in the courtroom ever since.

The psychiatrist told the jury the reason White snuck through a basement window before he shot the mayor and city administrator was his deep concern for others: "He didn't want to embarrass the officer who was operating a metal detector."

The Hinckley trial demonstrated what the heavenly city of courtroom psychiatry has become. Three teams of psychiatrists—11 in all—picked over Hinckley's mind for hours in an exercise that 200 years from now will no doubt seem much the way that the heated debates over the medieval heresies seem to us today. The resulting trial dragged on for 52 excruciating days. One defense psychiatrist, Thomas C. Goldman, told the jury with a straight face that Hinckley saw actress Jody Foster as an "idealized mother who is all-giving and endowed with magical power," while President Reagan was an "all evil prohibitive figure who hates him, seeks to destroy him, and deny access to the idealized mother figure." No wonder he tried to shoot the man.

Or take the comments of Richard Delman, a psychiatrist who testified for the defense in the Dan White trial. As Lee Coleman, also a psychiatrist, tells it in his new book, The Reign of Error, Delman concluded on the basis of inkblot and other tests that it was White's deep concern for others that led him to sneak into San Francisco City Hall through a window rather than walk in through the front door. "He didn't want to embarrass the officer who was operating the metal detector [and would have discovered his gun]," Delman said.

On at least one occasion this kind of analysis has been more than even the defendant could take. Coleman cites the case of Inez Garcia, who was raped by two men in Soledad, California; afterwards, she went home, got a rifle, and shot one of her attackers. At her trial she sat listening to defense psychiatrist Jane Olden go on and on about her "reactive formations" and her self-image as a "saint-like idealized virgin." "If you trigger her negative feelings, which would be provoked by such an act as rape," Olden explained, "being a hysterical person who was striving always to express this sensuality and aggression, then you could indeed throw her into a state where she is emotionally relating to her own conflict."

Garcia stood up and yelled at the judge, "I killed the motherfucker because I was raped and I'd kill him again."

If you smell a fish in such psychologizing, it is with good reason. There is a cadre of so-called "forensic psychiatrists," who show up in these insanity trials again and again, plying their offensive or defensive specialties. Dr. Alan Stone of Harvard, former head of the American Psychiatric Association, describes the kind of trial that results as a "three-ring circus, in which lawyers are the ringmasters and the psychiatric witnesses are the clowns, and if they are carefully trained, then they will be trained clowns."

Another Harvard psychiatrist, David Baer, was a defense witness in the Hinckley trial but does not regularly participate in these affairs, and he revealed some of the details to a reporter from Harper's. He spent, he said, at least 20 to 25 hours rehearsing his testimony with the lawyers, who admonished him, among other things, not to "weaken your answers with all the qualifications you think you ought to make." They said, "Oh, don't mention the exploding bullets. My God, that's so damaging to the case," he recalls. Baer, who was paid $35,000 for his efforts, added that he was "determined never to tell a lie."

That may be. But what happens to most psychiatrists who resist the "training" of the defense lawyers? "If a man doesn't testify the right way, he is not rehired," said one defense attorney in a study published in the Rutgers Law Journal. (Section 6 of the "Principles of Medical Ethics" of the American Psychiatric Association, by the way, reads: "A physician should not dispose of his services under terms or conditions which tend to interfere with or impair the free and complete exercise of his medical judgment.")
Did you hear voices?

The theory behind our “adversary” system is that when you pit one group of experts like these against another the truth will somehow emerge. When the hired-gun psychiatrists do their act, however, the result is not information, but confusion. “None of them had the same conclusion,” complained Nathalia Brown, a shop mechanic at the local electric utility and a Hinckley juror. “All of them said he had this illness, that illness, so how are we to know what illness he has? I felt on the brink of insanity myself going through this, you know.”

This, of course, is precisely what defense lawyers seek. As far back as 1945, Julian Carroll, the New York attorney who handled poet Ezra Pound’s famous insanity defense against treason charges, wrote a friend that insanity trials are a “farce” in which the “learned medicos for each side squarely contradict each other and completely befuddle the jury.” What was true then is even more true today, and all it took was confusion and nagging doubts in the minds of the jurors to gain Hinckley’s acquittal.

In the nation’s prisons, fooling the shrinks is getting to be a science. Inkblot tests offer fertile ground for displays of psychosis, and inmates who have successfully pleaded insanity have instructed their cohorts on what to see—sexual acts, genitalia, and the like. Ken Bianchi, the Hillside Strangler, studied books on psychology and hypnosis before convincing a number of psychiatrists he had a dual personality, and only an especially alert one found him out. An experiment at Stanford University suggested that conning these psychiatrists may not be all that hard. Eight subjects, all without any record of mental illness, feigned hearing voices and thereby gained admission to 12 different mental hospitals. They did not falsify any details of their lives other than that they heard voices. Eleven of the 12 were diagnosed as “schizophrenic” while the 12th was diagnosed “manic depressive.”

“I probably know more about psychiatry... than your average resident psychiatrist,” boasted Gary Trapnell, who had some justification for his claim. “I can bullshit the hell out of one in ten minutes.”

It’s not that psychiatry has nothing to tell us, nor that many of its practitioners are not dedicated to helping others. The problem is the way this specialty is used in insanity trials: the endeavor itself is in many ways absurd. These psychiatrists are interviewing criminals who know that if they come off seeming a little bananas, they might get off the hook. The notion that something resembling scientific data will always result from such subjective encounters is, well, a little bananas itself. On top of that, the courtroom psychiatrists are not purporting to inform us of a defendant’s present mental state, though even that can be elusive enough. They are claiming to divine the defendant’s mental state when he committed the crime, which probably was months before. “I can’t even tell you what I was thinking about a week ago, or a year ago, let alone what someone else was thinking,” says criminal psychologist Stanton Samenow, author of Inside the Criminal Mind, whose eight years working at St. Elizabeths hospital in Washington made him deeply skeptical of traditional attempts to understand and catalogue criminals according to Freudian concepts. Indeed, how would you begin to prove an assertion such as the one that John Hinckley tried to shoot Reagan because he saw the president as an “all evil prohibitive figure?” This is not evidence. It is vaporizing. Coleman testifies at criminal trials with delightful iconoclasm that psychiatrists such as himself have no more ability than anyone else to inform the jury as to what was going on in a criminal’s mind at any given time.

Poor relations

But one should not conclude that the only thing wrong with the insanity defense is that it lets the felons free on the basis of recondite psychiatric excuses. The injustice goes much deeper. Some psychiatrists, for example, lend their courtroom aura and mantle of expertise to the prosecution. Jim Grigson, the so-called “Hanging Shrink” of Texas, will tell a jury after a 90-minute interview with a defendant that this individual “has complete disregard for another human being’s life” and that “no treatment, no medicine, nothing is going to change this behavior.” Psychiatric opinionizing can cut both ways.

There’s the further problem that psychiatrists, the gatekeepers of this defense, have their greatest rapport with the problems of those closest to their own social status. A few years ago, Dr. Daniel Irving, a psychiatrist in Washington, demonstrated this attitude in an article Blaine Harden wrote for The Washington Post. “I hate to say this,” Irving confided, “but I don’t like to work with poor people... They are talking about stuff that doesn’t interest me particularly. They are the kind of people who don’t interest me.” Over 95 percent of all psychiatric patients are white, and James Collins, a black psychiatrist
who is chairman of the Howard University Medical School Department of Psychiatry, told
Harden that "[the] biggest single problem is that
many psychiatrists cannot relate to poor people."

In fact, the insanity defense itself can be
weighted heavily towards those who are well-off.
This is not just because a Hinckley family can
muster upwards of a million dollars to mount a
prodigious legal and psychiatric defense. On a
subtler level, someone from a "nice" upper-
middle-class background who commits a heinous
crime is more readily seen as off his rocker than
is someone from a poorer background in which
crime is closer to the norm (or is at least perceived
to be). During the Hinckley trial the jury
witnessed his family sitting behind him, the
"perfect couple," as one observer said later.
"Hinckley's father was sitting there with a
pondering look on his face; his mother was wear-
ing red, white, and blue outfits; and his sister was
a former cheerleader and homecoming queen.
Real Americans." Surely there must be something
wrong with a young man who could enjoy such
advantages and still go out and shoot a president.
It was the sort of tableau that a black felon from,
say, East St. Louis, might have some trouble
assembling.

Such considerations may help explain why
Henry Steadman of the New York State Depart-
ment of Mental Hygiene found that while whites
account for only 31 percent of the prison popula-
tion in his state, they were a full 65 percent of
those found not guilty by reason of insanity.
"Racial discrimination favoring whites in suc-
cessful insanity defenses is strongly suggested by
these figures," writes Abraham Halpern.

This in turn points to something even more
fundamentally unjust about the insanity defense:
the way it draws arbitrary and culture-bound
distinctions between defendants with different
types of life burdens and afflictions. A John
Hinckley may well harbor anger against his
parents and anguish at his unrequited love for ac-
tress Jody Foster. Such problems can be very real
for those who go through them. But they are no
more real, no more inclined to affect behavior,
than are the problems of a teenager of lesser
means, who may be ugly, or kept back in school
two or three times, or whose parents may not love
him and who may have been "passed around"
among relatives and older siblings for as long as
he can remember, or who may find doors closed

The Bard of St. Elizabeths

One of the most famous insanity cases in our history
is one that never went to trial. It involved the poet Ezra
Pound, who was indicted for treason after criticizing
the American war effort over Rome Radio during
World War II. Upon returning to the U.S., Pound was
declared unfit to stand trial and was sentenced to St.
Elizabeths mental hospital in Washington for the next
12 years.

Until recently, the case of interest mainly to a
small clique of Pound scholars. Now a new book en-
titled The Roots of Treason, by E. Fuller Torrey, has
given the episode a much wider import. Torrey, himself
a psychiatrist at St. Elizabeths, has unearthed a
fascinating inside story of how Pound's insanity
defense actually came about. In so doing, he suggests
how the inclinations of psychiatrists themselves come
into play in the insanity defense.

Central to the Pound case was one Winfred
Overholser, then the head of St. Elizabeths and a lion
of the psychiatric profession. Overholser, a cultured
and scholarly man, took a personal interest in Pound
and determined him unfit to stand trial, despite much
obvious evidence to the contrary.

There was considerable anxiety among his junior
staff when it came time for the case conference at the
hospital, because many of these staff members
disagreed with their boss's conclusion. Overholser,
moreover, had shown an inclination to bend profes-
sional judgments to institutional and other goals. For
example, he had dismissed the head of alcohol treat-
ment at the hospital for having the temerity to sug-
gest that the U.S. Congress—which funded St.
Elizabeths—included members who might possibly
have drinking problems.

"Out of loyalty to Win we had to respect Win's
diagnosis," one of those present recalled. "And since
we had come to such a different conclusion we finally
decided not to make any formal diagnosis at all."
Overholser, for his part, did not begrudge his pliant
subordinates their dissenting view. "We don't need to
disturb the practicalities of the situation by making
it public," he said. "We should just keep it to
ourselves."

And that is precisely what Overholser did when he
testified at Pound's hearing. Torrey asked one of
Overholser's subordinates, Dr. Carlos Dalmat, whether
the chief psychiatrist had committed perjury. "Of
course Dr. Overholser committed perjury," he replied.
"Pound was a great artist, a national treasure. I would
have committed perjury too—gladly."

Over the next 12 years, Pound lived in the building
in which Overholser's own quarters were located. They
had frequent literary discussions, and Overholser even
referred to Pound as his "guest." There is no evidence
that Pound received any treatment during his stay.

—J.R.
to him because he is not blond and blue-eyed the way Hinckley is. If a Hinckley merits our compassion, then surely those with hard life circumstances do also. Under the insanity defense, we absolve Hinckley totally of responsibility, while we label his hypothetical counterpart a bad person and send him to jail.

So arbitrary is the line that the insanity defense invites us to draw that all sorts of prejudices and vagaries can enter, of which racial and class bias are just two. "The actual psychological state of the defendant may be a rather minor factor" in the decision even to use the insanity defense, writes C.R. Jeffrey in his book, Criminal Responsibility and Mental Disease. Rather, this decision is based on such factors as "the economic position of the defendant, the nature of the criminal charges, the medical facilities in the community," and the like.

**Big difference**

This is not to say that you won't find any poor people or non-Caucasians in the maximum-security hospitals in which insanity acquittees are kept. You will, but it's important to understand how they got there. It probably wasn't through the kind of circus trial that John Hinckley could afford. Very likely, it was a plea bargain, in which a prosecutor decided it was better to put a dangerous person away, even if just for a short time, than to devote scarce resources to a trial that he or she might lose. One study, published in the Rutgers Law Review, found at least two jurisdictions in which the prosecutors actually raised the insanity defense more frequently than the defense attorney did. "Clearly the prosecutor saw the [insanity] defense as a means to lock defendants up without having their guilt proved beyond a reasonable doubt," the study concludes.

Given such realities, it should not be surprising that there is often not much difference between those who end up in maximum security mental hospitals and those who end up in their penal counterparts. "Lots of people could have ended up in either one or the other," says E. Fuller Torrey, a psychiatrist at St. Elizabeths mental hospital in Washington. Samenow goes further. On the basis of his own experience studying insanity acquittees at St. Elizabeths, he declares flatly that "neither [his colleague Dr. Samuel] Yochelson nor I found that any of the men we evaluated were insane unless one took tremendous liberties with that word."

That may be a bit of an exaggeration. But the similarities between criminals we call "insane," and those we call simply "criminals," cannot be dismissed. Take recidivism. There is evidence that criminals released from mental hospitals tend to repeat their crimes with about the same frequency as their counterparts released from prison. This point is crucial because the purpose of a criminal justice system is not just to punish offenders; it is to protect the rest of us from dangerous people as well. Through the insanity defense, we go to lengths that are often ridiculous to make a

"I don't like to work with poor people," the Washington psychiatrist said. "They are talking about stuff that doesn't interest me particularly."

...distinction that in many cases is without a difference.

Sometimes the experts are the last to see what needs to be done. Listen to Lawrence Coffey, one of the Hinckley jurors who was unhappy with the verdict for which he himself voted. "I think it [the law] should be changed," he told a Senate hearing, "in some way where the defendant gets mental help enough that where he's not harmful to himself and society, and then be punished for what he has done wrong." Maryland Copelin, also one of the jurors, agreed. "I think they [defendants] should get the help they need and also punishment for the act they did." In other words, Hinckley needed treatment, but he deserved punishment, too. Who could argue with that? Well, the law, for one. It said that Hinckley was either guilty or not guilty by reason of insanity. "We could not do any better than what we did," Copelin said, "on account of your forms," which gave the jury only these two options.

In short, the insanity defense cuts the deck the wrong way. It makes no provision for the vast middle ground in which offenders have problems

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but should bear responsibility too. Instead of persisting in making this artificial distinction between “normal” criminals (whatever that means) and “insane” ones, we should ask first a very simple question: did the individual commit the crime? That established in a trial, we should then, in a sentencing phase, take all relevant factors into account in deciding what combination of punishment and treatment is appropriate. “Either you did it or you didn’t do it,” says Samenow, who supports the abolition of the insanity defense. “I think we should try the criminal first, and then worry about treatment.” In other words, don’t expect the jury to make Talmudic distinctions on which even the experts cannot agree. Get the psychiatrists out of the courtroom, where they cause confusion, and put them into the sentencing and treatment process, where they may be able to help.

In this sentencing phase, which would take on a new importance, Hinckley’s infatuation with Jody Foster, and Dan White’s overindulgence in junk food, would be given due regard. So too would the incapacity of one who was totally deranged. The crucial difference from current practice is that the examination would be done by court-appointed psychiatrists (or other professionals) instead of by hired guns proffered by either side. Since psychiatrists are as human as the rest of us, this system would not be perfect. It would, however, be better than what we have today.

In almost all cases, some punishment would be in order. You don't have to believe that retribution is the whole purpose of the law to acknowledge that something very basic in us requires that when someone causes serious harm to someone else, he should pay. This approach would eliminate perhaps the most dangerous absurdity of the present insanity defense. When a criminal wins acquittal on this ground, the criminal justice system has no more claim on him. The only way he can be kept in confinement is if he is declared insane and committed to a mental institution through a totally separate procedure. (Some states require an automatic confinement for one or two months, ostensibly to “observe” the acquittee.) No problem, you say. They’ve just been declared insane. The problem is, that insanity was at the time of the crime, which may have been a year or more before. By the time of the commitment hearing, the old problem may have miraculously cleared up. The commitment authorities are then faced with two bad options. Either they tell the truth and let a dangerous person out or they fill a bed in a
crowded mental hospital with someone who will be there not for treatment, but only to be kept off the streets. Eliminating the insanity defense would eliminate such charades.

Once punishment is completed, the question of danger to society would come to the fore. First offenders committing non-violent crimes generally pose little such threat, and in most cases could be safely paroled. At the other extreme, violent repeat offenders would be locked up for a very long time. While reform is always possible, the sad fact is that most repeat offenders will keep on repeating until they reach a “burn-out” period sometime after they reach age 40. Since the recidivism rates cut across the categories we call “normal” and “insane” criminality, the insanity defense simply doesn’t help us deal with reality in this regard.

Hot-blooded crimes, such as the Dan White shooting, should be seen for what they are. Such people generally don't pose a great threat because the circumstances of their crime are not likely to happen again. It costs between $10,000 and $20,000 a year to keep a prisoner in jail, and that money would be better spent on those for whom it’s really needed. In other words, White's eight-year sentence was not necessarily wrong. The wrong was in the psychiatric speculation through which that result was justified. We can achieve justice in such cases through simpler and more honest means.

What a time

But isn't the insanity defense necessary to protect the infirm? “People who are mentally ill deserve treatment,” says Flora Rheta Schreiber, whose book The Shoemaker detail the sad story of a troubled murderer. “They don’t deserve to be locked up in prison.”

Fair enough. The trouble is, virtually all criminals have mental problems. The difference between a bank robber and yourself is not in your shirt size or the shape of your hands. Is there any such thing as a “sane” rape or a “sane” axe murder? If anyone did such deeds with calm and rational deliberation, would that individual not be the most insane—and dangerous—of all? Samenow, moreover, says that for the vast majority of criminals, the kind of treatment that might be effective is pretty much the same. The secret scandal of the insanity defense is the way it justifies our atrocious penal system by purporting to show kindness for one group that is selected arbitrarily in the first place. We deny treatment to the many under the pretext of providing it for a few.

And a pretext it often is. Talk to someone who has visited a maximum-security hospital for the criminally insane. To be sure, there are good ones here and there. But in his book, Beating the Rap, Henry Steadman describes a reality that is probably more common than not. Such hospitals in his state are “prisonlike,” he writes, with “locked wards, security officers, and barbed wire fences... There is a substantial level of patient-patient assault; homosexuality, both consenting and nonconsenting, is common, and guards are sometimes unnecessarily brutal... It is simply doing time in a different setting.” (Emphasis added.) Barbara Weiner, who heads a special outpatient program for insanity acquittees in Chicago—one of the few programs of its kind in the country—told a Senate hearing that “few states have specialized programs for treating mentally ill offenders.” (Those of means, of course, can often arrange a transfer to private facilities at which conditions are more genteel.)

So averse are American psychiatrists to helping people in life's lower stations that over half the staffs of this country's public mental hospitals are graduates of foreign medical schools, where standards may not be awfully high. In 11 states, including Illinois and Ohio, the figure is over 70 percent. Just try to imagine a psychiatrist from, say, India, trying to understand a felon from the South Bronx. Torrey cites a psychiatrist who left the Illinois state hospital system telling of a colleague in charge of prescribing drugs who did not know that .8 and .80 were the same number.

Much of the problem is that most of us prefer to keep a comfortable arm's length from such realities. The people who run our criminal justice system are no exception. After observing a year's worth of mental incompetency hearings in New York, Steadman observed that “of about 35 judges, 12 attorneys, six district attorneys, and 12 psychiatrists, not one had ever seen or been inside either of the two facilities to which incompetent defendants are committed.” A former public defender in Washington, D.C., who had pleaded before the Supreme Court the case of an insanity-acquittee who was trying to get out of St. Elizabeths, told me he had never met the individual for whose release he was pleading.

Getting rid of the insanity defense would help to break the spell and make us confront the deficiencies in our correctional systems. No longer could we congratulate ourselves that we are being humane and just when we are being neither. If eliminating the defense would help get a few dangerous felons off the street, so much the better. But a great deal more is at stake.