

1993

## Changes Implemented Pursuant to the Insanity Defense Reform Act: Effect on Trial by Jury Outcome

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Changes Implemented Pursuant to the  
Insanity Defense Reform Act:  
Effect on Trial by Jury Outcome

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A Thesis

Presented to

The Faculty of the Department of Psychology  
The College of William and Mary

In Partial Fulfillment  
of the Requirements for the Degree of  
Master of Arts

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by

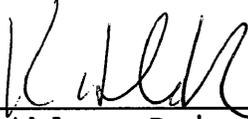
Kathleen Dring

1993

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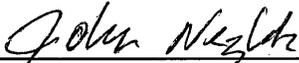
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the requirements for the degree of

Master of Arts

  
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## ABSTRACT

The Insanity Defense Reform Act (IDRA) was a legislative response to the acquittal of John Hinckley by reason of insanity. Part of the motivation for this legislation was to decrease the number of successful insanity defense pleas in the federal courts by changing who has the burden of proof from the prosecution to the defense. This study used mock juries to examine whether there would be fewer acquittals by reason of insanity under the IDRA than there had been under the previous law. This study also investigated whether the jurors understood the pattern jury instructions containing the applicable law. Finally this study examined how the deliberation process may have influenced individual decisions by examining jurors responses before and after deliberation. One hundred thirty four students at the College of William and Mary were shown a videotape of a mock trial based on an actual trial involving the insanity defense. Before and after deliberation subjects made determinations regarding the defendant's guilt, their attitude towards the defendant's insanity plea and completed a comprehension questionnaire.

Instructions consistent with the IDRA did not lead to significantly more guilty jury verdicts,  $X^2(3, N = 134) = 4.37$ , n.s., but after deliberation there were significantly more not guilty by reason of insanity verdicts when the burden was on the prosecution to prove insanity beyond a reasonable doubt,  $X^2(3, N = 134) = 12.44$ ,  $p < .05$ . Analysis of the subjects' attitude towards the defendant's insanity plea indicated that significantly more subjects believed the defendant was less morally responsible for his behavior when the burden was on the prosecution to prove sanity beyond a reasonable doubt,  $F(1, 127) = 4.30$ ,  $p < .05$ . Furthermore, when the burden was on the prosecution to prove sanity beyond a reasonable doubt the subjects more strongly endorsed the idea that the defendant should be in a psychiatric hospital rather than a prison in comparison to those subjects in the condition requiring the defense to prove insanity beyond a reasonable doubt,  $F(1, 127) = 5.34$ ,  $p < .05$ . Jury deliberation did not significantly impact the subjects' attitude towards the defendant's insanity plea or comprehension of the jury instructions. The jurors had particular difficulty comprehending the instructions

regarding who had the burden of proof when the burden was on the prosecution to prove sanity. This study did not find that jury decisions were significantly effected by the jury instructions, but the individual juror's decisions regarding the verdicts after deliberation did significantly differ depending upon the instruction condition. Also some of the individual juror's attitudes towards the insanity plea were significantly influenced by the instructions provided. Juror comprehension of the pattern jury instructions was impaired, particularly when the burden was on the prosecution to prove sanity.

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CHANGES IMPLEMENTED PURSUANT TO THE  
INSANITY DEFENSE REFORM ACT:  
EFFECT ON TRIAL BY JURY OUTCOME

Running Head: Insanity Defense

Changes Implemented Pursuant to the  
Insanity Defense Reform Act:  
Effect on Trial by Jury Outcome

One of the underlying theories of the insanity defense is based on the requirement that a crime requires the joint operation of act and intent (Handspike v. State, 1947). One who is insane cannot have the requisite mens rea (mental state) necessary to be held responsible for the criminal act (Callahan, Mayer & Steadman, 1987). Another theory underlying the insanity defense centers around the notion of free will. Criminal responsibility is assessed when a man has free will and elects to do evil (U.S. v. Brawner, 1972). A person who is insane at the time of the criminal act is not punishable because he or she lacks free will (Carter v. U.S., 1957).

There have been five major attempts in the U.S. to determine the nature of criminal responsibility and the types of conduct requisite for the insanity defense (Simon & Aaronson, 1988). The early foundations of the insanity defense arose from the case of Daniel M'Naghten (M'Naghten's Case, 1843).

M'Naghten suffered from what today may be

described as delusions of persecution symptomatic of paranoid schizophrenia (American Psychiatric Association, 1983). He shot an assistant to the prime minister of England mistakenly believing the assistant to be the prime minister. At trial, the jury returned a verdict of not guilty by reason of insanity.

This verdict evoked angry reactions from the public, parliament and Queen Victoria. The reactions resulted in the House of Lords requesting 15 common law judges to account for this perceived miscarriage of justice (Simon & Aaronson, 1988). The response of these judges has become known as the M'Naghten rule. Under the M'Naghten rule the accused cannot be convicted if at the time of the crime, the accused was laboring under such a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing, or that if he did know it, he did not know what he was doing was wrong (Simon & Aaronson, 1988).

The M'Naghten rule was widely accepted in the United States by 1851 and still remains the basis of the insanity defense in many states (Callahan et al., 1987). Some courts have supplemented the M'Naghten test with the concept of irresistible impulse. This

recognizes insanity as a defense when a mental disease results in an impulse "such as to override the reason and judgement and obliterate the sense of right or wrong to the extent that the accused is deprived of the choice between right and wrong" (Smith v. U.S., 1929, p. 549). Under the irresistible impulse standard, a defendant can be acquitted of a crime if his or her mental disease deprives the defendant of the will power to resist an insane impulse, even though the defendant knows the act is wrong.

In Durham v. U.S. (1954), the Court of Appeals for the District of Columbia rejected the M'Naghten rule and substituted a broader test for insanity known as the Durham rule. This test provided that "an accused is not criminally responsible if his unlawful act was the product of a mental disease or defect" (Durham v. U.S., 1954, p. 859). This rule was devised to facilitate expert testimony which was perceived to be confined by the narrowly focused M'Naghten rule. The M'Naghten rule by focusing on the defendant's cognitive impairment (i.e. ability to know right from wrong), restricted information medical experts could convey to the judge and the jury about the defendant's total mental functioning (U.S. v. Brawner, 1972). The

adoption of the Durham rule resulted in significant increases in acquittals by reason of insanity in the District of Columbia (Weiner 1980). This rule did not gain wide acceptance among other jurisdictions (Simon & Aaronson, 1988).

In U.S. v. Brawner, 1972, the Court of Appeals for the District of Columbia rejected the Durham rule and adopted with minor modification, Section 4.01(1) of the Model Penal Code of the American Law Institute (ALI). This rule states as follows:

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 to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.

One of the reasons the court rejected the Durham rule was that it resulted in undue dominance of the medical expert. This over-reliance on medical testimony was caused by the Durham rule requirement that the crime be a "product" of the mental disease. The medical expert testimony was given in terms of a non-medical construct ("product"), to express a conclusion that included moral and legal concerns. In

Browner v. U.S., (1972), the court commented on this reason for rejecting the Durham rule as follows:

There is, indeed irony in a situation under which the Durham rule, which was adopted in large part to permit experts to testify in their own terms concerning matters within their domain which the jury should know, resulted in testimony by the experts in terms not their own, to reflect unexpressed judgments in a domain that is properly not theirs but the jury's. (p. 983)

The ALI rule was applicable in all federal jurisdictions and a majority of the states on March 30, 1981 when John Hinckley, Jr. attempted to assassinate President Ronald Reagan as he left a hotel in Washington D.C. On June 21, 1982 a federal jury acquitted Hinckley of 13 crimes by a verdict of "not guilty by reason of insanity." This verdict was a catalyst for a wide range of reactions advocating changes in the insanity defense laws. The implicit goal of many of these proposals was to decrease the amount of acquittals by reason of insanity (Rogers, 1987). The reactions evoked from this verdict has many parallels to that which occurred subsequent to the acquittal of Daniel M'Naghten (Rogers, 1987).

Bonnie (1983), who was an influential witness at the Congressional hearings on the insanity defense subsequent to Hinckley's acquittal, had two primary recommendations. First, he recommended that the volitional prong (i.e. "to conform his conduct to the requirements of the law") be eliminated from the insanity defense. Bonnie reasoned that "there is no scientific basis for measuring a person's capacity for self-control or for calibrating the impairment of that capacity." (p. 196). Secondly, he proposed that the burden of persuasion should be shifted from the prosecution to the defense.

The U.S. Supreme Court in Davis v. U.S., (1895) established the rule applicable in federal courts regarding which party has the burden of proof on the insanity issue. According to this rule, there is a presumption of sanity at the time of the offense. The defendant must introduce some evidence of insanity at the time of the crime. Once this burden of going forward with the evidence has been met, the presumption of sanity has been rebutted, and the government then carries the burden of persuasion to show beyond a reasonable doubt that the defendant was sane at the time of the crime (U.S. v. Brawner, 1972).

## Insanity Defense 8

This was the law applicable to Hinckley's case and also was the source of much of the angry reaction subsequent to his acquittal. Shortly after the verdict, members of the Hinckley jury were invited to testify before a subcommittee of the Senate Judiciary Committee. Some of the jurors testified that the judge's instructions on the burden of proof affected their verdict (Simon & Aaronson, 1988).

The American Bar Association recommended that the volitional prong of the insanity defense be eliminated (Rogers, 1987). Their recommendation regarding burden of proof hinged upon whether the ALI or M'Naghten test for insanity is utilized. In those jurisdictions using the ALI test, the American Bar Association advocated that the defendant should have the burden of proving by a preponderance of the evidence that he/she was insane at the time of the offense. In those jurisdictions using a M'Naghten rule, the American Bar Association recommended that the prosecution should have the burden of disproving the defendant's claim of insanity beyond a reasonable doubt (Simon & Aaronson, 1988).

The American Psychiatric Association (1983) proposed that the ALI standard be revised by eliminating the volitional prong of the insanity

defense and retain only the cognitive component (i.e. "lacks substantial capacity to appreciate the wrongfulness of his conduct"). The American Psychiatric Association (1983) reasoned that psychiatric testimony relevant to whether a defendant understands the nature of his\her act has a more scientific basis than testimony relevant to whether a defendant was able to control his behavior.

Though declining to make a recommendation regarding who should have the burden of proof, the American Psychiatric Association (1983) did define the issue as whether the rights of the state or the rights of the individual are to be given more or less weight in insanity trials. In citing Addington v. Texas, a U.S. Supreme Court case in which the Court stated in dicta that psychiatric evidence is usually not sufficiently clear cut to prove many legal facts beyond a reasonable doubt, the American Psychiatric Association (1983) clearly framed this issue as one of great import in insanity trials. The American Psychiatric Association (1983) stated as follows:

It is commonly believed that the likely effect of assigning the burden of proof (burden of persuasion) to the defendant rather than the state

in insanity trials will be to decrease the number of such successful defenses. This matter clearly requires further empirical study. (p. 685)

The American Psychological Association was critical of the reactions of the American Psychiatric Association and the American Bar Association mainly on the basis that there was insufficient empirical evidence to make specific recommendations about the insanity defense. The American Psychological Association urged restraint despite the public and political pressure for immediate restructuring of the insanity defense (Rogers, 1987).

In 1984 the United States Congress in a significant legislative response to the Hinckley verdict, enacted the Insanity Defense Reform Act, 18 U.S.C. Section 17 (IDRA). This marked the first federal codification of the insanity defense (Simon & Aaronson, 1988). The IDRA states as follows:

(a) Affirmative defense- It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant as a result of a severe mental disease, was unable to

appreciate the nature and quality or the wrongfulness of his act. Mental disease or defect does not otherwise constitute a defense.

(b) Burden of proof- The defendant has the burden of proving the defense of insanity by clear and convincing evidence.

The IDRA differs from the ALI standard in several ways. First, it eliminates the volitional prong as was recommended by the American Psychiatric Association and the American Bar Association. Second, the Act places the burden on the defendant to prove insanity by clear and convincing evidence. Most states that place the burden of proof on the defendant only require the defendant to prove insanity by a preponderance of the evidence (Simon & Aaronson, 1988). This lesser burden would have been consistent with the American Bar Association's proposal. Finally, the IDRA adopted a more stringent cognitive standard (i.e. "unable to appreciate" as opposed to "lacks substantial capacity to appreciate"), for demonstrating insanity.

The constitutionality of placing the burden of proof upon the defendant has been unsuccessfully challenged (U.S. v. Amos, 1986; U.S. v. Freeman, 1986). In U.S. v. Amos, (1986), the Court of Appeals

for the 8th Circuit held that the IDRA was not violative of due process by shifting the burden of proof to the defendant or by setting the standard for the burden of proof at clear and convincing evidence rather than preponderance of the evidence. In Amos (1986), the court relied on Leland v. Oregon, (1952), in which the Supreme Court held an Oregon statute constitutional that required the defendant to prove insanity beyond a reasonable doubt. In Leland (1952), the Court ruled that the issue of insanity is separate from the crime charged and as long as the prosecution must prove each element of the crime beyond a reasonable doubt, the statute was not constitutionally infirm.

The changes instituted by the IDRA were primarily motivated to reduce the number of successful assertions of the insanity defense (American Psychological Association, 1987; Callahan et al., 1987; Dripps, 1987). There has been little or no empirical investigation as to how the IDRA has impacted trial by jury outcomes and how this law has affected attitudes toward a particular defendant's insanity plea.

Homant and Kennedy (1987) investigated the variations in expert witnesses' judgments of insanity

in a hypothetical case. They found that a favorable opinion of the defendant's insanity plea correlated with being a psychiatrist, having a liberal ideology and having received a neutral as opposed to a sympathetic or unsympathetic version of the case. It was also found in a post hoc analysis that an association existed between experts residing in states where the prosecution has the burden of proof to show sanity and a favorable opinion of the defendant's insanity plea. Homant and Kennedy (1987) concluded that their study lent support to the contention that placing the burden of proof on the defense would reduce the number of inappropriate insanity verdicts.

As exemplified by the testimony of the several Hinckley jurors before a subcommittee of the Senate Judiciary Committee, the jury instructions are a crucial factor in any trial. Improper jury instructions can be the basis for reversal of a trial court decision (e.g. Wilson v. U.S., 1914; Billeci v. U.S., 1950). Psychological research has indicated that juror difficulties in comprehending instructions on the law is considerable and widespread (Severance, Greene & Loftus, 1984). A concern of psychological research has been to recognize jurors' difficulties in understanding

the instructions and to use concepts of psycholinguistics to construct instructions that are both comprehensible and accurate reflections of the law (e.g., Borgida & Park, 1988; Elwork, Sales & Alfini, 1977; Severance & Loftus, 1982; Severance, Greene & Loftus, 1984).

A common courtroom practice is the use of pattern jury instructions. Pattern jury instructions have been devised to address the concern that inaccurate jury instructions may give to rise to reversal on appeal. Pattern instructions are standardized statements of the law designed to be applicable generally to many cases (Severance & Loftus, 1982). These instructions are generally designed by committees of judges and lawyers to be routinely used in their jurisdictions (Severance, Greene & Loftus, 1984).

Strawn and Buchanan (1976), found that subject jurors who received oral pattern instructions only showed slight improvement in comprehension of legal issues as compared to subject jurors who received no instructions. Elwork, Sales and Alfini (1977), examined pattern instructions pertaining to the law of negligence and found no significant difference in comprehension of negligence law between a group

receiving pattern instructions and a group receiving no instructions. Similarly, comprehension of jury instructions regarding the entrapment defense was found to be poor because of the complexity of the language used in the instruction (Borgida & Park, 1988).

Severance and Loftus (1982) found that one of the common areas of juror misconception concerns the notion of "reasonable doubt" as applied in the criminal law. Juror subjects receiving pattern jury instructions did not have significantly greater comprehension of "reasonable doubt" than did those jurors receiving no instructions.

A different result was found by Kerr, Atkin, Stasser, Meek, Holt and Davis (1976), who examined the concept of reasonable doubt as both an individual and a group decision criteria. The "reasonable doubt" variable had three levels. The first group of subjects received no instructions and the other 2 groups of subjects received reasonable doubt instructions of varying stringency. In the individual decision condition those individuals who were given the more lax definition of reasonable doubt rendered the highest portion of guilty verdicts. Those in the no instruction condition gave proportionally more guilty

verdicts than the stringent criteria group but less than the lax criteria group. One of the conclusions reached in this study was that the concept of reasonable doubt is not obvious to their sample of college students (Kerr et al. 1976). This is consistent with Dane (1985) who concluded that the concept of reasonable doubt is a difficult concept for jurors to comprehend and to apply effectively in rendering a decision.

Kagehiro (1990) reviewed research on juror comprehension that compared definitions of three levels of the standard of proof (preponderance of the evidence, clear and convincing and beyond a reasonable doubt). She concluded that quantified definitions in which the standard of proof is expressed in probability terms and combined quantified and legal definitions had their intended effect. The number of favorable plaintiff verdicts increased as the standard of proof became stricter. Definitions that did not use quantified definitions did not have the intended effect.

Other studies have examined the impact of jury instructions on juror's decisions. Cruse and Browne (1987) found that the timing of instructions did not

significantly effect the juror's reasoning or verdicts but the frequency of the instructions influenced the jurors use of legal rules in making their verdicts. Greene (1988) evaluated the effectiveness of a simplified instruction compared to a more linguistically complicated instruction that is commonly used in the courtroom to focus juror's attention on eyewitness issues. It was found that those jurors hearing the revised instruction were more knowledgeable of the existing factors to consider when evaluating eyewitness testimony and were less likely to convict the defendant.

Helgeson and Shaver (1990) demonstrated the importance of examining the impact of jury instructions in realistic settings. In a series of three studies involving a criminal indictment, an instruction regarding the presumption of innocence, used to alleviate a nonevidentiary bias (congruence between crime and offender's occupation), was not effective in eliminating the congruent effects when the trial information was presented in a brief written format. The congruence effect was alleviated when the instructions were given in the context of a full trial. Helgeson and Shaver (1990) concluded that experiments

concerned with legal and social judgement processes that do not incorporate realism into their design may discover spurious biases that may not be found in richer experimental environments.

Issues of external validity have been a major concern in a variety of legal research areas. One particular area of concern is whether individual judgments can be used to make conclusions about group/jury judgments. A discussion of the general conceptual problems associated with extrapolating research results from individual cognitive behavior to social behavior has been discussed by Davis (1982). Davis, Kameda, Parks, Stasson & Zimmerman (1989) note that individual-to-group extrapolations can be flawed when there is a failure to consider the contribution of interpersonal interaction on group member opinion change. McGowen and King (1982) found that juries render more moderate decisions than do individuals and concluded that it is therefore important to consider verdicts from juries rather than from isolated jurors. These results were consistent with Izett and Leginiski (1974) who found that for mock juries, post-discussion verdicts were significantly more lenient than pre-discussion verdicts for an unattractive defendant.

The finding that juries render more moderate decisions than individuals should be considered with other research on group decisions that has found that groups tend to make decisions that are more extreme than, but in the same direction as the initial individual decisions (McGuire, Kiesler, & Siegel, 1987; Kaplan, 1977). Investigations of this group polarization effect in mock jury situations has shown that when decisions are made on a bipolar judgement dimension, group discussion tends to move the average of both the individual and group preferences toward the pole that the prediscussion individual preference favors (Kaplan & Miller, 1977; Kaplan & Miller, 1978). Polarization does not occur when equal sized and equally opinionated factions are opposed (MacCoun, 1989).

One aspect of jury research that is not explained by group polarization is the leniency effect that was initially described by Kalven and Zeisel (1966). The leniency effect refers to the finding that not-guilty majorities have greater power than guilty majorities in establishing group-level consensus (Davis et al., 1989). Deliberation in mock jury studies generally leads to greater leniency (Davis, Kerr, Stasser, Meek, &

Holt, 1977; Kerr, 1981). This leniency effect was even observed when the jurors seemed to initially favor conviction (Tanford & Penrod, 1986).

Spitzer, & Holt (1976) suggest that the leniency effect is reflective of a "defendant protection norm". MacCoun and Kerr (1988) found this effect when jurors were given reasonable doubt instructions and not when they heard the same case with preponderance of the evidence instructions. The reasonable doubt standard may provide a rhetorical advantage for jurors favoring acquittal during deliberation, and the effect of the standard is magnified by group discussion (MacCoun, 1989).

Mock jury research has also considered how group members resolve initial differences and reach consensus. Deutsch and Gerard (1955) proposed two processes of social influence in groups: normative and informational. Normative influence is defined as "influence to conform with the positive expectations of another," and informational influence is defined as "influence to accept information from another as evidence of reality" (p.629). Kaplan and Miller (1983) assert that informational influence may be the dominant process when no consensus is needed, judgments are

private, or fact finding is emphasized. Normative influence may be more likely when agreement is required, judgments are publicly made, or social concerns are emphasized.

Both of these processes are activated in jury decision making (Stasser & Davis, 1981; Tanford & Penrod, 1986). Tanford and Penrod (1986) suggest that to the extent that normative influence occurs in a jury, verdicts should be a function of jurors' vote preferences. Informational influence should operate through the content of deliberations. Stasser and Davis (1981) found that juror's stated verdict preferences were predominantly influenced by normative pressures, but certainty of their decision was susceptible to informational influence. In actual jury decisions both processes occur. There is often a requirement of unanimity, so there is pressure for a group consensus resulting in a normative influence. Trials also call upon juries to be fact finders, so there is an informational influence (Tanford & Penrod, 1986).

Mathematical models have been proposed to predict group choice shifts from the initial individual preferences to group consensus. A model frequently

used in mock jury research is the social decision scheme proposed by Davis (1973). This model maps the likelihood of transitions from initial, predeliberation conviction-to acquittal ratios in the group to final group verdicts. Research applying this theory has consistently shown that the verdict preferred by a clear majority of jurors at the outset of deliberation is likely to be chosen as the group's final verdict (MacCoun & Kerr, 1988).

The purpose of this study was to examine how the changes implemented by the IDRA regarding who has the burden of proof (i.e. prosecution or defense), and the required level of the proof (beyond a reasonable doubt or clear and convincing) will affect acquittal rates and attitudes towards the defendant's insanity defense in a hypothetical case. Furthermore, given the research indicating juror difficulty in understanding jury instructions, this study investigated whether the jurors would be able to recall and apply important legal points relative to the insanity defense, after they had been read the jury instructions. Finally, this research compared individual decisions regarding the defendant's insanity plea before and after jury deliberation. Particular attention was given to the

leniency effect and the majority decision scheme.

The first hypothesis of this study was that the jury instruction consistent with the IDRA (i.e. burden on the defendant, clear and convincing evidence), would result in significantly fewer acquittals and would result in the jurors having a less favorable attitude towards the insanity defense than the jury instructions consistent with the ALI rule (i.e. burden on the prosecution, beyond a reasonable doubt). Furthermore, the more stringent standard of proof when the burden is on the prosecution, would result in more juries and jurors finding the defendant not guilty and having a more favorable attitude towards the insanity plea as presented. The more stringent standard of proof when the burden is on the defense, would result in more juries and jurors finding the defendant guilty and having a less favorable attitude towards the defendant's insanity plea. It was also hypothesized that the subjects would understand the jury instructions and they would be able to properly apply the law contained therein to the facts of the case as presented.

Finally, this study hypothesized that the jury deliberations would influence the individual decision

results as reflected by a difference between the pre and post deliberation measures. Furthermore, it was hypothesized that the group final verdicts would reflect the preference of a majority of the individual jurors.

#### METHOD

##### Subjects

One hundred thirty four undergraduate students over the age of 18 years from the College of William and Mary participated in this study. Each subject received two hours of research credit for their participation. The subjects were solicited from sign-up sheets posted in the psychology building at the College. The sign-up sheets indicated that the purpose of the study was to investigate the insanity defense laws.

##### Materials

A hypothetical case derived from the transcript of U.S. v. Amos (1986) was presented in videotape format. A summary of the case presented to the mock jurors is found in Appendix A. U.S. v. Amos (1986) was a case heard shortly after passage of the IDRA and was unsuccessfully appealed by the defendant on the basis that placing the burden of proving insanity by clear

and convincing evidence upon the defendant was unconstitutional. It was one of the first reported cases applying the IDRA. It involved extensive psychiatric testimony on the insanity issue. The government's expert witness, Dr. Park Dietz, had testified in the Hinckley trial.

The research videotape was made in the Moot Court Room at the Marshall-Wythe School of Law. The same one hour videotape of the trial was shown to all of the subjects. The only variation in the videotape was in the judge's instructions to the jury which corresponded to the four treatment conditions in the study. The jury instructions were derived from the pattern jury instructions commonly used in federal court (Appendix B, Jury Instruction: Burden on Defense, Beyond a Reasonable Doubt; Appendix C, Jury Instruction: Burden on Defense, Clear and Convincing Evidence; Appendix D, Jury Instruction: Burden on Prosecution, Beyond a Reasonable Doubt; Appendix E, Jury Instruction: Burden on Prosecution, Clear and Convincing Evidence). The attorneys on the videotape were actual attorneys licensed to practice in Virginia and admitted to the Federal Court for the Eastern District of Virginia. The experts were played by psychology students in their

first year of the Masters program at William and Mary. The judge was also a psychology graduate student. No evidentiary matters were ruled upon by the judge and her main function was to read the jury instructions and to introduce aspects of the trial at transitional points.

Each subject was presented with a questionnaire (IDQ), after watching the videotape, designed to measure their attitude towards the insanity defense plea presented in the hypothetical case (Appendix F). This questionnaire is a modification of that used by Homant and Kennedy (1987). The questionnaire consists of six items and the subjects were asked to respond with a number from 1 (strongly disagree) to 5 (strongly agree) for each item. The lower the score on this scale the greater the support for the defendant's insanity plea. Total scores possible on the measure range from 6 to 30.

Also, each subject received a verdict form (Appendix G), which asked the subject whether they would find the defendant guilty or not guilty by reason of insanity. Actual juries in federal criminal trials are presented with three options: guilty, not guilty and not guilty only by reason of insanity. These

versions were modified to prevent confusion.

Finally, a comprehension questionnaire was given to each subject (Appendix H, Burden on Prosecution, Beyond a Reasonable Doubt; Appendix I, Burden on Prosecution, Clear and Convincing Evidence; Appendix J, Burden on Defense, Clear and Convincing Evidence; Appendix K Burden on Defense, Beyond a Reasonable Doubt), to determine whether the subjects understood the law as contained in the jury instructions. This was presented to the jurors after they had heard the judge's instructions. Total scores possible on the measure range from 0 to 7.

Also a group verdict form was given to each jury on which they could indicate their group decision (Appendix L).

### Procedure

The testing sessions were conducted in classrooms on the William and Mary campus. The subjects were tested in eight group sessions. Each subject was randomly assigned to one of the eight sessions. Upon arriving at the test session each subject was given a consent form.

The subjects were then read instructions about the study. After the instructions were read the researcher

answered questions that the subjects may have had. The instructions informed the subjects that they would be watching a videotape of a reenactment of an actual trial involving the insanity defense and that they would be asked to render a verdict individually and in a jury setting. Those subjects willing to participate were then asked to sign the consent form. After signing the consent form the participants were shown the videotape. After the videotape the subjects were given a five minute break and they were instructed not to discuss the case with anyone during the break.

Then the subjects, in groups of 4-6, were shown the judge reading one set of the jury instructions. There were four different jury instructions (burden on prosecution, beyond a reasonable doubt; burden on prosecution, clear and convincing; burden on defense, beyond a reasonable doubt; burden on defense, clear and convincing). These instructions are presented in Appendices H through K. The reading of the instructions took approximately seven minutes. After hearing the instructions the subjects completed the individual verdict forms, the comprehension questionnaire and the IDQ. Subjects were then assigned to juries randomly.

Each test session consisted of 15 to 18 people.

Attempts were made to have 6 person juries but this was not always possible due to some subjects not arriving for their test session. The jurors were instructed that they were to try and come to a unanimous decision regarding the defendant's insanity plea. If they could not come to a unanimous decision within 20 minutes they were informed that their jury would be considered a hung jury.

The deliberations took place in the Social Psychology laboratory. Each jury had their own private room. One person on each jury panel was asked to record the group's decision on the verdict form.

After returning to the classroom from deliberation the subjects were then given the same comprehension and attitude questionnaire they completed initially. They also completed another verdict questionnaire asking them whether they changed their vote in the deliberation process (Appendix M). The subjects were then thanked for their participation.

### Results

Comparisons between the four jury instruction conditions showed that instructions regarding who has the burden of proof and the level of that burden did not significantly effect group jury verdicts. A chi-

square analysis in which hung juries were grouped with not guilty verdicts, indicated that the four jury instructions did not significantly effect jury verdicts,  $X^2(3, N = 24) = 4.44, n.s.$  Table 1 presents the distribution of jury verdicts for each instruction condition.

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Insert Table 1 about here

---

Prior to jury deliberation, the individual verdicts did not differ depending on the instruction condition,  $X^2(3, N = 134) = 4.37, n.s.$  After deliberation there was a significant difference between the individual verdicts by instruction,  $X^2(3, N, = 134) = 12.44, p < .05.$  There were significantly more not guilty by reason of insanity verdicts when the burden was on the prosecution to prove insanity beyond a reasonable doubt. Table 2 presents the frequency distribution for individual verdicts before and after deliberation by instruction.

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Insert Table 2 about here

---

A 2 (level of proof) x 2 (burden of proof)

repeated measure analysis of variance was performed, with the repeated measure on each item of the IDQ before and after deliberation, to assess whether there were differences between the groups on the IDQ. Table 3 presents the  $F$  ratios for each question on the IDQ.

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Insert Table 3 about here

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On IDQ(1) there was a significant between subjects burden x level interaction,  $F(1, 127) = 4.30, p < .05$ . When the burden was on the prosecution to prove sanity beyond a reasonable doubt the subjects indicated that the defendant was less morally responsible for his behavior than when the burden was on the defense to prove insanity beyond a reasonable doubt. Figure 1 presents this interaction.

---

Insert Figure 1 about here

---

On IDQ(2) there was a significant time (before or after deliberation) x level interaction,  $F(1, 127) = 5.22, p < .05$ . When the burden was clear and convincing the subjects showed greater endorsement of the statement "the defendant should be sentenced to prison

for a long time" after deliberation, but when the burden was beyond a reasonable doubt the subjects showed less endorsement of this statement after deliberation. Figure 2 presents this interaction.

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Insert Figure 2 about here

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On IDQ(3) there was a significant difference between the groups depending on whether the level of proof was clear and convincing or beyond a reasonable doubt,  $F(1,127) = 5.47, p < .05$ . When the level of proof was clear and convincing the subjects indicated that the defendant's behavior showed less probability of insanity ( $M = 4.02$ ), than when the burden of proof was beyond a reasonable doubt ( $M = 3.65$ ).

On IDQ(4) and IDQ(5) there were no significant differences between the groups either before or after deliberation. Refer to Table 3 for the relevant F ratios.

On IDQ(6) there was a significant level x burden between subjects interaction,  $F(1,127) = 5.34, p < .05$ . Figure 2 presents the mean score on IDQ(6) as a function of level of proof and burden of proof.

---

Insert Figure 3 about here

---

When the burden is on the prosecution to prove sanity beyond a reasonable doubt the subjects more strongly

endorse the idea that the defendant should be in a hospital rather than a prison in comparison to those subjects in the condition requiring the defense to prove insanity beyond a reasonable doubt. Table 4 presents the mean scores on each item of the IDQ before and after deliberation by instruction.

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Insert Table 4 about here

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A 2 (level of proof) x 2 (burden of proof) repeated measure of analysis of variance, with the individual jurors total correct answers on the comprehension questionnaire as the repeated measure, showed no significant differences before deliberation,  $F(20, 110) = 1.07, n.s.$ , or after deliberation,  $F(20, 110) = .94, n.s.$  Table 5 presents the mean number of correct answers on the comprehension questionnaire before and after deliberation.

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Insert Table 5 about here

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Each item on the comprehension questionnaire completed prior to deliberation was analyzed to determine if there was a difference between the

instruction conditions in terms of whether the subjects answered an item correctly or incorrectly. On items 1, 2, 3, 4, 5, and 7 there were no significant differences between the instruction conditions on the number of correctly answered items. The results for each item were as follows: Item 1- $X^2(3, N = 134) = 1.33, n.s.$ ; Item 2- $X^2(3, N = 134) = 2.54, n.s.$ ; Item 3- $X^2(3, N = .78, n.s.$ ; Item 4- $X^2(3, N = 6.23, n.s.$ ; Item 5- $X^2(3, N = 134) = 2.57, n.s.$ ; Item 7- $X^2(3, N = 134) = 5.35, n.s.$

On item 6, which elicited information about who has the burden to prove sanity/insanity, there was a significant difference between the instruction groups on the number of correct answers  $X^2(3, N = 134) = 12.44, P < .05$ . When the burden was on the prosecution to prove sanity beyond a reasonable doubt significantly fewer subjects indicated this burden correctly. The distribution of the correct and incorrect answers on item 6 by instruction is provided in Table 6.

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Insert Table 6 about here

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Note in Table 6 that when the burden was on the prosecution only 16 out of 67 (85%) subjects correctly stated that the burden was on the defense. When the

burden was on the prosecution and the subjects correctly answered that the burden was on the prosecution 10/16 or 62% of them found the defendant guilty. When the burden was on the defense and the subjects correctly answered that the burden was on the defense 50/57 or 87% found the defendant guilty.

In order to assess whether the group deliberation process influenced individual decisions on the IDQ a 4 (instruction) x 6 (jury nested within instruction) x 2 (level of proof) x 2 (burden of proof) analysis of covariance, with the score on each item of the IDQ and the total score on the IDQ before deliberation being the covariate, was performed. Table 7 presents the results indicating that group deliberation did not significantly impact the subjects attitude towards the defendant's insanity plea.

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Insert Table 7 about here

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A similar analysis was performed to determine if the deliberation process significantly effected the total scores on the comprehension questionnaire. There were no significant effects for the level of proof,  $F(1, 107) = .42, n.s.$ : for burden of proof,  $F(1, 107) =$

.70, n.s. or for the interaction between level and burden of proof,  $F(1, 107) = .10$ , n.s.

#### Discussion

The jury instructions regarding who has the burden of proof and the level of that proof did not effect jury verdicts. But this finding alone is insufficient to conclude that the IDRA will not lead to fewer successful insanity defense pleas than was found under the prior law. The reason for the reluctance to draw such a conclusion is based on the fact that the case as presented to these subjects heavily favored the prosecution and that the subjects had difficulty understanding the instructions regarding who had the burden of proof. These findings attenuate a conclusion that the jury verdicts were not influenced by the instructions and the applicable law as contained in these instructions.

In the analysis of the individual dependent measures there are some findings to suggest that the different instructions influenced these measures in the predicted direction. Prior to deliberation there were no differences among the jury instruction groups on individual verdict decisions, but after deliberation there were significantly more not guilty by reason of

insanity verdicts when the burden was on the prosecution to prove sanity beyond a reasonable doubt.

In an analysis of the individual responses to each item on the insanity defense questionnaire, some evidence suggests that who has the burden of proof and the level of that proof influences the jurors' attitudes towards the defendant's insanity plea.

Placing the burden on the prosecution to prove sanity beyond a reasonable doubt resulted in significantly greater endorsement of the notion that the defendant is not morally responsible for his behavior, and that he should be in a hospital rather than a prison. These results are consistent with the findings of Homant and Kennedy (1987) who found that an association existed between who has the burden to prove sanity/insanity and attitudes towards the insanity defense. The results are also similar to that of Kerr et al. (1976) in that the most stringent standard for the prosecution results in the more favorable findings for the defendant.

The jurors did not increase their comprehension by participating in the deliberation process. This result can partially be explained by the large number of guilty verdicts, which in many cases rendered discussion unnecessary when all the subjects agreed on

the verdict immediately. Possibly the high agreement in verdicts increased the subject's confidence that they comprehended the law as it was to be applied to the facts and decreased the need to reassess their knowledge at the second administration of the comprehension questionnaire.

It has been concluded that groups tend to recall and recognize information better than individuals (Volarth, Sheppard, Hinsz & Davis, 1989). But this finding may be limited to situations where there is an actual decision making process allowing the group to check errors of the individual. Therefore, the nature of the task impacts the decision making process and thereby influences the ability of the group dynamic to increase accuracy in recall. In this study many jury's faced the task only of determining if there was a group consensus and upon finding such a consensus their task was complete. This is different from a situation where the problem to be solved requires an exchange of information between individuals regarding how and why they arrived at a decision. Possibly future research could be undertaken to require the jurors to complete comprehension questionnaires as part of their deliberation process.

Though attempts were made to increase the external validity of the experiment by videotaping a mock trial based on an actual case, not all aspects of a real trial could be replicated. One important difference between the videotape and an actual trial concerns the attorneys' use of the burden issues when presenting a case before an actual jury. Adversarial techniques suggest that when an opposing party has a heavy burden of proof issue, it can be advantageously used in arguments to the jury, especially in closing statements. This is particularly effective for the defense when the prosecution has the burden to prove an issue beyond a reasonable doubt. Due to experimental constraints this was not done on the videotape. Based on the findings of Cruse and Brown (1987), that it is not the timing of the instructions but the amount of times they are given, videotaping may have diluted the impact of the instructions.

Overall it does not seem that the jurors fully comprehended the jury instructions particularly with regard to who has the burden of proof and what is the level of proof. Of particular concern is that those subjects who were in the condition requiring the prosecution to prove sanity gave significantly more

wrong answers on the question regarding this burden than those subjects in the condition requiring the defense to prove insanity. Furthermore, those subjects that were in the instruction condition requiring the prosecution to prove sanity most frequently said it was the defense that was required to prove insanity. This finding supports the idea that possibly once the jurors made up their mind that the defendant was guilty they were not attuned to information that may have been contrary to their hypotheses about the defendant. This is consistent with social cognition research that suggests that people have a tendency to gather information about others in ways that confirm their beliefs about that person. Pyszcznski and Greenberg (1987) suggest that even though accuracy is considered to be an important goal it is not the only goal that may be motivating an individual in arriving at an attribution.

The instructions used were pattern jury instructions. These are the types of instructions that Severance & Loftus (1982) have found to be difficult to understand. The findings from this study confirm the previous findings about the difficulty subjects have in understanding the instructions, particularly

instructions concerning burden of proof issues. The most frequently missed question concerned who had the burden of proof and the meaning of the level of proof (Severance & Loftus, 1982; Kerr et al., 1976). These findings are also consistent with Dane's (1985) conclusion that the concept of reasonable doubt is a difficult concept for juries to comprehend and to apply effectively in their decision making process.

Group deliberation did not significantly effect decisions regarding guilt and therefore this study does not offer confirming evidence for the group polarization effect suggested by McGuire, Keisler, and Siegel (1987). The lack of a significant finding may be due to the high number of guilty verdicts in the initial decision process. But the findings are supportive of the group polarization effect because there were more guilty verdicts after deliberation than before deliberation. The average of the individual's preferences after deliberation moved more to the pole that the majority of the individuals preferred prior to deliberation. This is also consistent with the social decision scheme model proposed by Davis (1973) which predicts that the verdict preferred by a clear majority of jurors at the outset of deliberation is likely to be

chosen as the group's final verdict.

This may reflect the normative influence process that jurors use to resolve initial differences (Deutsch & Gerard, 1955). Because of the large number of guilty verdicts before deliberation the number of not guilty verdicts in each jury was relatively small. Therefore, the not guilty verdicts were generally influenced to reach a consensus by changing their vote to guilty.

Table 1

Distribution of Jury Verdicts by Instruction

---

	Guilty	Not Guilty
<hr/>		
<b><u>Prosecution</u></b>		
Reasonable Doubt	3	3
Clear & Convincing	4	2
<b><u>Defense</u></b>		
Clear & Convincing	6	0
Reasonable Doubt	5	1
<b><u>Total</u></b>	<b>18</b>	<b>6</b>

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Table 2

Distribution of Individual Verdicts Before and After Deliberation


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	Guilty	Not Guilty
<b><u>Prosecution</u></b>		
Reasonable Doubt		
Before	26	9
After	25	10*
Clear & Convincing		
Before	29	3
After	34	0
<hr/>		
<b><u>Defense</u></b>		
Clear & Convincing		
Before	29	5
After	34	0
Reasonable Doubt		
Before	28	5
After	29	4

---

\*After deliberation there were significantly more not guilty by reason of insanity verdicts when the burden was on the prosecution to prove insanity beyond a reasonable doubt.

Table 3

F ratios for the IDQ on the 2 (level of proof) x 2 (burden of proof) repeated measure ANOVA.

	IDQ(1)	IDQ(2)	IDQ(3)	IDQ(4)	IDQ(5)	IDQ(6)
<b><u>Between</u></b>						
Burden	1.40	1.80	0.10	0.01	0.90	1.55
Level	1.02	0.01	5.47*	1.82	0.16	2.52
Burd x Lev	4.30*	0.23	1.71	1.00	0.63	5.34*
<b><u>Within</u></b>						
Time	0.20	2.44	0.01	0.00	0.02	0.71
Burden x Time	0.87	1.84	0.53	0.69	0.11	2.91
Level x Time	0.01	5.22*	0.24	0.35	0.80	0.02
Burd x Lev x Time	0.03	0.02	0.88	1.01	2.94	0.02

---

p < .05

Table 4

Mean Scores on the IDQ Before and After Deliberation by Instruction

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	IDQ(1)	IDQ(2)	IDQ(3)	IDQ(4)
<b><u>Prosecution</u></b>				
Reasonable Doubt	3.89/3.83	2.97/2.63	3.54/3.51	3.69/3.66
Clear and Convincing	4.36/4.29	2.90/2.87	4.16/4.07	4.10/4.00

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	IDQ(1)	IDQ(2)	IDQ(3)	IDQ(4)
<b><u>Defense</u></b>				
Reasonable Doubt	4.33/4.36	3.18/3.03	3.82/3.76	3.85/3.79
Clear and Convincing	4.16/4.24	2.97/3.10	3.88/3.97	3.78/3.90

---

(table continues)

Table 4

	IDQ(5)	IDQ(6)	TOTAL
<b><u>Prosecution</u></b>			
Reasonable Doubt	3.80/4.66	3.17/2.97	21.05/20.60
Clear and Convincing	4.26/3.97	3.87/3.71	23.78/23.25
<hr/>			
	IDQ(5)	IDQ(6)	TOTAL
<b><u>Defense</u></b>			
Reasonable Doubt	4.24/4.18	3.70/3.76	23.09/23.06
Clear and Convincing	4.06/4.18	3.56/3.61	22.48/23.11
<hr/>			

Table 5

Mean Number of Correct Answers out of seven on the  
Comprehension Questionnaire Before and After  
Deliberation

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	Before	After
<b><u>Prosecution</u></b>		
Reasonable Doubt	3.68	3.71
Clear and Convincing	3.96	4.12

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<b><u>Defense</u></b>		
Reasonable Doubt	4.21	4.12
Clear and Convincing	4.20	4.32

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Table 6

Distribution of Correct and Incorrect Answers to  
Question 6 on the Comprehension Questionnaire

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	Incorrect	Correct
<b><u>Prosecution</u></b>		
Reasonable Doubt	28	7
Clear and Convincing	23	9
<b><u>Defense</u></b>		
Reasonable Doubt	3	30
Clear Convincing	7	27

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Table 7

ANCOVA Results for the IDQ with Scores on the IDQ Before Deliberation as the Covariate

<u>IDQ(1)</u>					
<u>Source</u>	<u>SS</u>	<u>Df</u>	<u>MS</u>	<u>F-Ratio</u>	<u>P</u>
Level	.17	1	.17	.42	.52
Burden	.48	1	.47	1.16	.28
Lev x Burd	.21	1	.21	.52	.47
<u>IDQ(2)</u>					
Level	.77	1	.77	1.49	.23
Burden	1.15	1	1.15	2.43	.12
Lev x Burd	.06	1	.06	.12	.73
<u>IDQ(3)</u>					
Level	.77	1	.77	1.49	.23
Burden	.01	1	.01	.02	.88
Lev x Burd	.20	1	.20	.39	.54
<u>IDQ(4)</u>					
Level	.75	1	.75	1.64	.20
Burden	.02	1	.02	.05	.82
Lev x Burd	.05	1	.05	.12	.73

(table continues)

Table 7

			<u>IDQ(5)</u>		
Level	.24	1	.24	.20	.66
Burden	.36	1	.36	.30	.59
Lev x Burd	.01	1	.01	.01	.95
			<u>IDQ(6)</u>		
Level	.06	1	.00	.00	.07
Burden	1.63	1	1.63	3.34	.07
Lev x Burd	.96	1	.96	1.98	.16
			<u>IDQ(TOTAL)</u>		
Level	1.43	1	1.43	.16	.70
Burden	5.76	1	5.76	.63	.43
Lev x Burd	4.06	1	4.06	.44	.51

Appendix A

CHARGE

Jeff Arnold is indicted for the federal crime of kidnapping and use of a firearm.

DEFENSE

Defendant raises the defense of insanity. There is not much dispute as to the facts surrounding the crime.

APPLICABLE LAW

The insanity defense is asserted by Mr. Arnold as his only defense. Basically, most of the facts regarding the crime are agreed upon by both sides. The federal law defines insanity as the following:

The test is a two-pronged test: (1) the defendant must have a severe mental disease or defect. If there is no such mental disease or defect you need not consider the second prong; (2) Because of the mental disease or defect, the defendant must not have been able to appreciate the nature and quality of his acts or the wrongfulness of his acts.

FACTUAL SUMMARY

1. Jeff Arnold and Barbara Shore begin a romantic relationship in 1983 while both working at a TV station.
2. In 1984 relationship stops because Barbara changes jobs. Relationship resumes in 1986.
3. Jeff Arnold is married to someone else for most of relationship. In August 1986 he says he will get a divorce and marry Barbara. Barbara is surprised by this. Relationship stops.
4. February 1987- relationship resumes.
5. May 1988- Barbara accepts job in Richmond, and Jeff accepts job in D.C. Jeff helps Barbara move into her new apartment and ends up staying there.
6. Barbara's parents find out Jeff is living with Barbara and that he is married to Susan. They get upset, call Barbara and suggest she break up with Jeff.
7. November 1988- Jeff gets a divorce from Susan and asks Barbara to marry him. She first says yes, and then declines.

8. November 1988- Barbara's father has heart attack and Barbara goes to parent's house to help mother. Barbara does not want to see Jeff, but he comes to her parent's house and causes a disturbance. The police are called.

9. Jeff tries to abduct Barbara in car so that they can work their problems out. Barbara agrees to resume relationship so he will take her back home. She later calls him and tells him this was not true.

10. December 1988- Jeff has gun and meets Barbara in parking lot. Jeff tampered with car so she could not escape. A co-worker rescued her.

11. Barbara gets restraining order.

12. New Year's Eve Jeff abducts Barbara from parent's home. Very carefully planned out the abduction: rigged truck, maps, food, handcuffs, gun, climbs into attic and cuts hole in ceiling, cuts telephone wires. Cuts one alarm but another is set off. He shakes when he breaks into house. He carries a gun.

13. Jeff expresses concern that police might

follow so takes back roads. Tells her they are going to Mexico. Has maps, Spanish translation books.

14. First night stays in N.C. hotel. Jeff makes sexual advances and Barbara complies. She says it is out of fear.

15. Jeff allows Barbara to make phone calls through which FBI locates them. Jeff spends most of time talking how he wants them to get back together and that if only he could get her alone away from her parents influence, everything will be o.k.

16. After being in jail for six months, and Barbara has not visited him, Jeff still believes that she has feelings for him.

17. Jeff threatens suicide on their trip south. He says if she won't be with him he'd rather die. He had previously threatened suicide if Barbara did not join him in D.C.

18. Jeff goes through a serious depression after Barbara refuses to marry him subsequent to his divorce.

19. After Barbara returned the engagement ring Jeff had given her she gave him a Christmas present. It was a pillow and a note attached saying she loved him.

20. Jeff had no history of any kind of violent or anti-social behavior before 1983. There was no evidence of any psychopathology.

DEFENDANT'S CASE

- Defendant's expert Dr. Robert Close is a psychiatrist at Norfolk Sentara Hospital and a professor at EVMS medical school.

- He interviewed Jeff in September and October 1989 and reviewed other psychiatric reports, including the staff at Federal Prison where Mr. Arnold is being held. He also reviews Dr. Day's report. Also reviews basis for opinion list.

1. personal interviews (2).
2. other psychiatric reports including psychiatric prison reports and that of Dr. Day.
3. written letters/statements of defendant including essay "About my love."

4. FBI reports: interview with Jeff Arnold, interview with Barbara Shore, inventory of truck's contents, interview with Patty Hark.

- Important that Jeff had no psychiatric problems prior to 1983.
- Another important event: call from Barbara's parents voicing disapproval of the relationship. This creates a great deal of tension.
- First indication of unrealistic behavior is his jealousy. Suspicious and possessive.
- After Barbara returned engagement ring- Jeff's behavior was significant. He strongly felt that Barbara does love him and that her parents are interfering with their relationship. He believes that she still loves him, but that she is unable to express it because of interference of her family.
- Clear change in Jeff's behavior when he tried to abduct her from parking lot and road in December 1988:
- very depressed (symptoms- low mood, crying,

difficulty with sleep, decreased energy.) All he could think about was Barbara. Lost interest in all usual activities.

- Jeff still felt Barbara loved him even after she got a restraining order telling him to keep away and lawyer calls him telling him to move out of Barbara's apartment. The same day he gets voter registration certificate, so that he and Barbara would have I.D. if they crossed Mexico border.

- At this point, Jeff is clearly delusioned. He is also suffering from a major depression. This persisted throughout December. He could not work, he had insomnia or hypersomnia. He felt like life was not worth living if Barbara was not with him. He has delusions of persecution, jealousy and erotomania and also the delusion that Barbara loved him despite the evidence to the contrary.

- The delusion is that despite all the evidence to the contrary, Jeff still believes Barbara loves him. He is so committed to this idea that he would go to any length to try to get her with him. He believed the world was doing him wrong by

trying to keep them apart. A delusion is a fixed false belief.

- Three parts to the delusion:

1. Barbara loved him despite contrary evidence.
2. That Barbara's parents were interfering with her expression of her love.
3. That her parents interference with their relationship was wrong and dishonest and he should do what he had to, to give their relationship a chance.

- Even though Jeff knew what he was doing was illegal, and he made great plans to avoid capture, he thought what he was doing was right.

- Summary of psychiatric diagnosis:

1. first evidence of disturbance is pathological jealousy and excessive possessiveness and suspicion.
2. after Barbara leaves him he develops a major depression.
3. also has the paranoid delusion that Barbara is in love with him and that other

people are doing wrong by keeping them apart.

- At the time of offense he had a mental disease- including a paranoid disorder with erotomania and a major depressive reaction.

Erotomania: a paranoid disorder whereby the person has a delusion or a fixed false belief that someone else is in love with him when there is evidence to the contrary. It is a delusional disorder not associated with hallucination or thought disturbance as seen in paranoid schizophrenia.

- Even after his arrest, Jeff was making plans to abduct Barbara. This plan was revealed to Patty Hark. this shows delusional quality of his thinking.

- He reconciles Jeff's trying to elude capture- by saying that Jeff perceived he was doing the right thing even though he knew it was illegal. (At time of report by Dr. Close, DSM III did not have an erotomania category. It has since been added.)

- Dr. Close agrees with Dr. Day that Jeff was aware that other people thought what he was doing

was illegal- but Dr. Close says Jeff himself subjectively did not appreciate that what he was doing was wrong. Dr. Close distinguishes between a legality and what is subjectively thought to be right or wrong.

PROSECUTION'S CASE

- Dr. Day: Government's expert witness:
- credentials: psychiatrist at Medical College of Virginia and Professor of Psychiatry at Virginia Commonwealth University.
- does not believe that defendant suffers from erotomania for the following reasons:
  - Barbara and Jeff had a genuine relationship. Barbara had communicated to Jeff that she loved him as late as November 1988.
  - Jeff does not have a delusion that she loves him. Evidence exists that she does love him.
  - Does not think erotomania should be diagnosed after a relationship ends.
  - It may be the defense mechanism of denial rather than a delusion.
  - Jeff suffered from no other delusion. He did

exhibit jealousy when they were living in Richmond and when they moved back to Norfolk. But this was not delusional.

- Only evidence that makes him wonder whether Jeff has erotomania is after his arrest when he has no contact with Barbara he still believes Barbara has no ill feelings towards him and that she may even visit him in prison. This is quite a distortion according to Dr. Day. But he says it does not amount to a delusion because as recent as the abduction, Barbara told him that she loved him (even if it was said for her survival). Dr. Day calls this an unrealistic hope and not a delusion. The unrealistic hope was not founded in psychopathology, but in his love for Barbara.

- Jeff did not have any psychosis

- During the time he was depressed, his functioning varied. At times he slept all day and did not work. This is characteristic of severely depressed people. At other times he functioned quite well. He was functioning well when he planned the first abduction. He became depressed

again after his plan failed.

- Jeff knew the nature and quality of his actions.

This is shown by his meticulous planning of the alleged crime (disabling phone line and alarm at Barbara's parent's house).

- This planning and these actions also show that he appreciated the wrongfulness of his acts. He cut the phone lines and this shows he was thinking ahead.

- Also Jeff told him that he experienced extreme shaking when he cut the hole in attic roof. This emotional arousal showed that he realized something bad may happen to him and that he recognized what he was doing. He therefore appreciated the nature and quality of his actions.

- He was also aware that his actions were wrongful which is evidenced by him disabling the phone lines, taking a gun with him showed that he may encounter resistance, taking back roads to avoid detection.

- He knew what he was doing was wrong and that Barbara did not want to go with her. If he had

erotomania he would have thought Barbara wanted to go with him and he would not have had to use force.

- He tells his mother on the phone during the abduction that he is sorry he has hurt her, he asks if FBI knows he has truck and what the license plate is. All these show he appreciated the wrongfulness of the crime.

- Jeff did not suffer from a mental disease or defect at the time of the crime.

- Jeff did not have delusion that Barbara did not want to be with him because of her parent's objection. This was not a delusion because it did have some basis in fact.

- In Jeff's mind he thought it was proper for him to abduct Barbara. This is selfishness. It does not mean that he did not appreciate the wrongfulness of his actions.

#### WHAT IS EROTOMANIA?

- Erotomania is a delusional disorder. The main feature is the delusion which is a fixed false belief maintained in the face of contradictory

evidence.

- These delusional disorders are uncommon and difficult to treat.
- The DSM-III-R makes the presence of delusions in the absence of schizophrenia, affective, or organic illness the essential features of this condition.
- Requirements:
  1. nonbizarre delusions (i.e. involving situations that occur in real life- such as being followed)
  2. auditory or visual hallucinations if present are not prominent
  3. apart from the delusions, the behavior is not bizarre.
  4. if major depressive or manic syndrome has been present during the delusional disturbance, the total duration of all episodes of the mood syndrome has been brief relative to the total duration of the delusional disturbance.
  5. has never met criteria for schizophrenia,

and if cannot be established that an organic factor initiated and maintained the disturbance.

- Specify type: Erotomania- delusional disorder in which the predominant theme of the delusion is that a person, usually of a higher status is in love with the subject.
- Freud referred to a male in formulating the concept of erotomania but actually women more frequently have the disorder. The person fancies that a famous man is in love with her and therefore she with him. She feels that for reasons known only to the two of them, the loved one cannot acknowledge this love openly. She may pursue him but then be shocked by his sexual advances, since sexual reality does not usually fit into the fantasized scheme.

Appendix B

Jury Instruction: Burden of Proof on Defendant to prove  
Insanity Beyond a Reasonable Doubt

Ladies and gentlemen of the jury I am now going to read the instructions to you. You will not receive a copy of the instructions.

1. You have now heard all the testimony in this case and the argument of counsel. It now becomes the Court's duty to give you the law that should govern your decision in this case. The law applicable to this case is given to you in all these instructions. It is your duty to follow the instructions. They will be given to you orally as I am doing. Faithful performance by you of your duties is vital to the administration of justice. It is your duty to determine the facts and to determine them from the evidence and the reasonable inferences arising from such evidence, and in so doing you must not indulge in guess work and speculation. The opening and closing statements of the attorneys are intended to help you in understanding the evidence and applying the law, but they are not evidence. You must not be influenced in

any degree by any personal feeling of sympathy for or prejudice against any party to this suit, for each party is entitled to the same fair and impartial consideration.

2. When the defendant asserts the defense of insanity, then the burden to prove that insanity rests with the defendant. The defendant must assert that, he cannot require the Government to prove that he is not insane. That burden is on the defendant to prove that he is mentally incompetent as the instruction's define here.

3. The defendant has been charged in the indictment with willfully and knowingly kidnapping and abducting Barbara Shore in violation of Title 18, United States Code, Section 1201. He has also been charged with unlawfully carrying a firearm in violation of Title 18, United States Code, Section 924c.

4. Unlawfully means contrary to the law, so to do an act unlawfully means to do willfully something which is contrary to the law. An act is done willfully if it is done voluntarily and intentionally and with specific intent to do something the law forbids, that is to say

with bad purpose either to disobey or to disregard the law. I am going to read the next two instructions to you which have to do with the question of the issue of insanity or wrongfulness.

5. Under the defendant's plea of not guilty there is an issue as to his sanity at the time of the alleged offense. The law does not hold a person criminally accountable for his conduct while insane, since an insane person is not capable of forming the intent essential to the commission of a crime. A defendant is insane within the meaning of these instructions if at the time of the commission of the acts constituting the offense the defendant as a result of severe mental disease or defect was unable to appreciate the nature and quality of his acts or was unable to appreciate the wrongfulness of his acts. For the purpose of throwing light upon the mental condition of the accused at the time of the alleged offense the jury may consider evidence of his mental state both before and after that time. The material issue, however, is whether the defendant was sane or insane at the time of the alleged criminal conduct. Unless evidence is offered to the

contrary, a defendant is presumed sane. If, however, you find beyond a reasonable doubt that the defendant was insane as defined in these instructions, you may so find on your verdict form. A reasonable doubt is a doubt based on reason and common sense- the kind of doubt that would make a person hesitate to act.

6. Wrongfulness as used in this instruction means wrongfulness rather than criminal wrongfulness. In other words, if you find beyond a reasonable doubt that defendant because of a mental disease or defect lacks substantial capacity to appreciate the wrongfulness of his conduct, even if he knows his conduct to be criminal, but so commits it because of a delusion that was justified, then your verdict must be not guilty by reason of insanity.

I want to take this opportunity to thank you for your time and effort in the deliberation of this matter.

Appendix C

Jury Instruction: Burden of Proof on Defendant to prove  
Insanity by Clear and Convincing Evidence

Ladies and gentlemen of the jury I am now going to read the instructions to you. You will not receive a copy of the instructions.

1. You have now heard all the testimony in this case and the argument of counsel. It now becomes the Court's duty to give you the law that should govern your decision in this case. The law applicable to this case is given to you in all these instructions. It is your duty to follow the instructions. They will be given to you orally as I am doing. Faithful performance by you of your duties is vital to the administration of justice. It is your duty to determine the facts and to determine them from the evidence and the reasonable inferences arising from such evidence, and in so doing you must not indulge in guess work and speculation. The opening and closing statements of the attorneys are intended to help you in understanding the evidence and applying the law, but they are not evidence. You must not be influenced in

any degree by any personal feeling of sympathy for or prejudice against any party to this suit, for each party is entitled to the same fair and impartial consideration.

2. When the defendant asserts the defense of insanity, then the burden to prove that insanity rests with the defendant. The defendant must assert that, he cannot require the Government to prove that he is not insane. That burden is on the defendant to prove that he is mentally incompetent as the instruction's define here.

3. The defendant has been charged in the indictment with willfully and knowingly kidnapping and abducting Barbara Shore in violation of Title 18, United States Code, Section 1201. He has also been charged with unlawfully carrying a firearm in violation of Title 18, United States Code, Section 924c.

4. Unlawfully means contrary to the law, so to do an act unlawfully means to do willfully something which is contrary to the law. An act is done willfully if it is done voluntarily and intentionally and with specific intent to do something the law forbids, that is to say

with bad purpose either to disobey or to disregard the law. I am going to read the next two instructions to you which have to do with the question of the issue of insanity or wrongfulness.

5. Under the defendant's plea of not guilty there is an issue as to his sanity at the time of the alleged offense. The law does not hold a person criminally accountable for his conduct while insane, since an insane person is not capable of forming the intent essential to the commission of a crime. A defendant is insane within the meaning of these instructions if at the time of the commission of the acts constituting the offense the defendant as a result of severe mental disease or defect was unable to appreciate the nature and quality of his acts or was unable to appreciate the wrongfulness of his acts. For the purpose of throwing light upon the mental condition of the accused at the time of the alleged offense the jury may consider evidence of his mental state both before and after that time. The material issue, however, is whether the defendant was sane or insane at the time of the alleged criminal conduct. Unless evidence is offered to the

contrary, a defendant is presumed sane. If, however, you find by clear and convincing evidence that the defendant was insane as defined in these instructions, you may so find on your verdict form. When a party has the burden of proving an issue by clear and convincing evidence, he must produce evidence that creates in your mind a firm belief or conviction that he has proved the issue.

6. Wrongfulness as used in this instruction means wrongfulness rather than criminal wrongfulness. In other words, if you find by clear and convincing evidence that defendant because of a mental disease or defect lacks substantial capacity to appreciate the wrongfulness of his conduct, even if he knows his conduct to be criminal, but so commits it because of a delusion that was justified, then your verdict must be not guilty by reason of insanity.

I want to take this opportunity to thank you for your time and effort in the deliberation of this matter.

Appendix D

Jury Instruction: Burden on Prosecution, Beyond a  
Reasonable Doubt

Ladies and gentlemen of the jury I am now going to read the instructions to you. You will not receive a copy of the instructions.

1. You have now heard all the testimony in this case and the argument of counsel. It now becomes the Court's duty to give you the law that should govern your decision in this case. The law applicable to this case is given to you in all these instructions. It is your duty to follow the instructions. They will be given to you orally as I am doing. Faithful performance by you of your duties is vital to the administration of justice. It is your duty to determine the facts and to determine them from the evidence and the reasonable inferences arising from such evidence, and in so doing you must not indulge in guess work and speculation. The opening and closing statements of the attorneys are intended to help you in understanding the evidence and applying the law, but they are not evidence. You must not be influenced in

any degree by any personal feeling of sympathy for or prejudice against any party to this suit, for each party is entitled to the same fair and impartial consideration.

2. The defendant has been charged in the indictment with willfully and knowingly kidnapping and abducting Barbara Shore in violation of Title 18, United States Code, Section 1201. He has also been charged with unlawfully carrying a firearm in violation of Title 18, United States Code, Section 924c.

3. Unlawfully means contrary to the law, so to do an act unlawfully means to do willfully something which is contrary to the law. An act is done willfully if it is done voluntarily and intentionally and with specific intent to do something the law forbids, that is to say with bad purpose either to disobey or to disregard the law. I am going to read the next two instructions to you which have to do with the question of the issue of insanity or wrongfulness.

4. Under the defendant's plea of not guilty there is an issue as to his sanity at the time of the alleged offense. The law does not hold a person criminally

accountable for his conduct while insane, since an insane person is not capable of forming the intent essential to the commission of a crime.

The government must prove beyond a reasonable doubt either that at the time of the offense charged, the defendant did not have a mental disease or defect, or that despite the mental disease or defect he had substantial capacity both to appreciate the wrongfulness of his conduct and to conform his conduct to the requirements of the law. A reasonable doubt is a doubt based on reason and common sense- the kind of doubt that would make a person hesitate to act.

For the purpose of throwing light upon the mental condition of the accused at the time of the alleged offense you may consider evidence of his mental state both before and after that time. The material issue, however, is whether the defendant was sane or insane at the time of the alleged criminal conduct.

5. Wrongfulness as used in this instruction means wrongfulness rather than criminal wrongfulness. In other words, the defendant may have been aware that his conduct was criminal, but in order for you to find him

sane, you must find beyond a reasonable doubt that he was able to appreciate the wrongfulness of his actions.

I want to take this opportunity to thank you for your time and effort in the deliberation of this matter.

Appendix E

Jury Instruction: Burden of Proof on Prosecution,  
Clear and Convincing Evidence

Ladies and gentlemen of the jury I am now going to read the instructions to you. You will not receive a copy of the instructions.

1. You have now heard all the testimony in this case and the argument of counsel. It now becomes the Court's duty to give you the law that should govern your decision in this case. The law applicable to this case is given to you in all these instructions. It is your duty to follow the instructions. They will be given to you orally as I am doing. Faithful performance by you of your duties is vital to the administration of justice. It is your duty to determine the facts and to determine them from the evidence and the reasonable inferences arising from such evidence, and in so doing you must not indulge in guess work and speculation. The opening and closing statements of the attorneys are intended to help you in understanding the evidence and applying the law, but they are not evidence. You must not be influenced in

any degree by any personal feeling of sympathy for or prejudice against any party to this suit, for each party is entitled to the same fair and impartial consideration.

2. The defendant has been charged in the indictment with willfully and knowingly kidnapping and abducting Barbara Shore in violation of Title 18, United States Code, Section 1201. He has also been charged with unlawfully carrying a firearm in violation of Title 18, United States Code, Section 924c.

3. Unlawfully means contrary to the law, so to do an act unlawfully means to do willfully something which is contrary to the law. An act is done willfully if it is done voluntarily and intentionally and with specific intent to do something the law forbids, that is to say with bad purpose either to disobey or to disregard the law. I am going to read the next two instructions to you which have to do with the question of the issue of insanity or wrongfulness.

4. Under the defendant's plea of not guilty there is an issue as to his sanity at the time of the alleged offense. The law does not hold a person criminally

accountable for his conduct while insane, since an insane person is not capable of forming the intent essential to the commission of a crime.

The government must prove by clear and convincing evidence either that at the time of the offense charged, the defendant did not have a mental disease or defect, or that despite the mental disease or defect he had substantial capacity both to appreciate the wrongfulness of his conduct and to conform his conduct to the requirements of the law. When a party has the burden of proving an issue by clear and convincing evidence, he must produce evidence that creates in your mind a firm belief or conviction that he has proved the issue.

For the purpose of throwing light upon the mental condition of the accused at the time of the alleged offense the jury may consider evidence of his mental state both before and after that time. The material issue, however, is whether the defendant was sane or insane at the time of the alleged criminal conduct.

5. Wrongfulness as used in this instruction means wrongfulness rather than criminal wrongfulness. In

## Insanity Defense

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other words, the defendant may have been aware that his conduct was criminal, but in order for you to find him sane, you must find by clear and convincing evidence that he was able to appreciate the wrongfulness of his actions.

I want to take this opportunity to thank you for your time and effort in the deliberation of this matter.



Appendix G

Sex \_\_\_\_\_ ID \_\_\_\_\_

In the United States District Court  
for the College of William and Mary

United States of America

Plaintiff,

vs.

At Law No. 89-C

John Doe,

Defendant.

Verdict Form

Based on full consideration of the evidence I find  
(check one)

\_\_\_\_\_ The defendant is not guilty by reason of  
insanity.

\_\_\_\_\_ The defendant is guilty of the offense(s) as  
charged.

Appendix H

Sex \_\_\_\_\_ ID \_\_\_\_\_

Comprehension Questionnaire

Instructions: Based on your understanding of the insanity defense, please place the letter corresponding to the correct statement on the line to the left of each numbered question.

- \_\_\_\_\_ 1. Which of the following statement(s) would necessarily be true if a defendant was found guilty by reason of insanity?
- a. The defendant was unable to appreciate the wrongfulness of his acts at the time of the offense and was unable to assist in his own defense at the time of trial.
  - b. The defendant has a long history of mental illness and the predominant medical evidence indicates his illness will not improve.
  - c. The defendant was incapable of forming the intent required for commission of the crime.
  - d. Both b and c.

- \_\_\_\_\_2. Which evidence below could be considered when evaluating the defendant's insanity plea?
- a. The prior planning engaged in by defendant in preparation for the criminal act.
  - b. The testimony of family members regarding the defendant's bizarre behavior shortly after commission of the crime.
  - c. Psychiatric opinion testimony regarding the defendant's mental state at the time of the crime.
  - d. All of the above.
- \_\_\_\_\_3. Which of the following would be the material issue in evaluating the defendant's insanity plea?
- a. The defendant's sanity or insanity at the time of the alleged offense.
  - b. Whether the defendant was actually guilty of the offense charged.
  - c. Whether the prosecution and defense expert psychiatric witnesses agreed upon the defendant's state of mind.

d. Both a and b.

- \_\_\_\_\_ 4. Which of the following statements is most consistent with the legal definition of insanity?
- a. The defendant was psychotic at the time of the crime.
  - b. The defendant was justifiably enraged by a situation and could not control his impulses at the time of the crime.
  - c. The defendant was mentally ill and because of his illness could not appreciate the fact that his criminal act was wrong.
  - d. The defendant was unable to appreciate the nature and quality of his acts and was unable to appreciate the wrongfulness of his acts.
- \_\_\_\_\_ 5. Which of the following defendants will most likely be acquitted by reason of insanity?
- a. Mr. A because although he knew it was wrong to shoot the crossing guard, he was laboring under a delusion that the crossing guard was actually the devil.

b. Mr. B because he has been severely mentally ill most of his life and because of his mental illness he thought he was squeezing a lemon but actually he was strangling his wife.

c. Mr. C because when he saw a driver deliberately run over his dog Fido, he lost all control of his impulses and struck the driver with a baseball bat.

d. All of the above.

\_\_\_\_\_ 6. Which of the following is true about the insanity defense?

a. Sanity is an element of the crime and must be proven by the government.

b. Insanity at the time of the crime must be proven by the defense.

c. The government must show sanity at the time of the trial and the defendant must show insanity at the time of the offense.

d. None of the above.

\_\_\_\_\_ 7. The concept of reasonable doubt as applied to the insanity defense is consistent with which

of the following statements?

- a. A reasonable doubt is doubt based on an individual's common sense.
- b. If a juror has a doubt based on reason that the defendant was sane at the time of the offense, the juror should vote to acquit the defendant.
- c. If the evidence more likely than not indicates that the defendant was sane at the time of the offense, the government has met its burden to show the defendant was sane at the time of the crime.
- d. Both a and b.

Appendix I

Sex \_\_\_\_\_ ID \_\_\_\_\_

Comprehension Questionnaire

Instructions: Based on your understanding of the insanity defense please place the letter corresponding to the correct statement on the line to the left of each numbered question.

- \_\_\_\_\_ 1. Which of the following statement(s) would necessarily be true if a defendant was found guilty by reason of insanity?
- a. The defendant was unable to appreciate the wrongfulness of his acts at the time of the offense and was unable to assist in his own defense at the time of trial.
  - b. The defendant has a long history of mental illness and the predominant medical evidence indicates his illness will not improve.
  - c. The defendant was incapable of forming the intent required for commission of the crime.
  - d. Both b and c.

- \_\_\_\_\_2. Which evidence below could be considered when evaluating the defendant's insanity plea?
- a. The prior planning engaged in by defendant in preparation for the criminal act.
  - b. The testimony of family members regarding the defendant's bizarre behavior shortly after commission of the crime.
  - c. Psychiatric opinion testimony regarding the defendant's mental state at the time of the crime.
  - d. All of the above.
- \_\_\_\_\_3. Which of the following would be the material issue in evaluating the defendant's insanity plea?
- a. The defendant's sanity or insanity at the time of the alleged offense.
  - b. Whether the defendant was actually guilty of the offense charged.
  - c. Whether the prosecution and defense expert psychiatric witnesses agreed upon the defendant's state of mind.

d. Both a and b.

- \_\_\_\_\_ 4. Which of the following statements is most consistent with the legal definition of insanity?
- a. The defendant was psychotic at the time of the crime.
  - b. The defendant was justifiably enraged by a situation and could not control his impulses at the time of the crime.
  - c. The defendant was mentally ill and because of his illness could not appreciate the fact that his criminal act was wrong.
  - d. The defendant was unable to appreciate the nature and quality of his acts and was unable to appreciate the wrongfulness of his acts.
- \_\_\_\_\_ 5. Which of the following defendants will most likely be acquitted by reason of insanity?
- a. Mr. A because although he knew it was wrong to shoot the crossing guard, he was laboring under a delusion that the crossing guard was actually the devil.

b. Mr. B because he has been severely mentally ill most of his life and because of his mental illness he thought he was squeezing a lemon but actually he was strangling his wife.

c. Mr. C because when he saw a driver deliberately run over his dog Fido, he lost all control of his impulses and struck the driver with a baseball bat.

d. All of the above.

\_\_\_\_\_ 6. Which of the following is true about the insanity defense?

a. Sanity is an element of the crime and must be proven by the government.

b. Insanity at the time of the crime must be proven by the defense.

c. The government must show sanity at the time of the trial and the defendant must show insanity at the time of the offense.

d. None of the above.

\_\_\_\_\_ 7. If the prosecution has proven sanity at the time of offense by clear and convincing

evidence, this means which of the following?

- a. The prosecution has countered all reasonable arguments by the defense.
- b. The jurors have little doubt that the defendant was sane at the time of the crime.
- c. The jurors on balance believe the prosecution's expert psychiatric testimony over the defendant's psychiatric testimony regarding the defendant's sanity at the time of the offense.
- d. The prosecution has created a firm belief in the juror's minds that the defendant was sane at the time of the offense.

Appendix J

Sex \_\_\_\_\_ ID \_\_\_\_\_

Comprehension Questionnaire

Instructions: Based on your understanding of the insanity defense please place the letter corresponding to the correct statement on the line to the left of each numbered question.

- \_\_\_\_\_ 1. Which of the following statement(s) would necessarily be true if a defendant was found guilty by reason of insanity?
- a. The defendant was unable to appreciate the wrongfulness of his acts at the time of the offense and was unable to assist in his own defense at the time of trial.
  - b. The defendant has a long history of mental illness and the predominant medical evidence indicates his illness will not improve.
  - c. The defendant was incapable of forming the intent required for commission of the crime.

d. Both b and c.

\_\_\_\_\_ 2. Which evidence below could be considered when evaluating the defendant's insanity plea?

a. The prior planning engaged in by defendant in preparation for the criminal act.

b. The testimony of family members regarding the defendant's bizarre behavior shortly after commission of the crime.

c. Psychiatric opinion testimony regarding the defendant's mental state at the time of the crime.

d. All of the above.

\_\_\_\_\_ 3. Which of the following would be the material issue in evaluating the defendant's insanity plea?

a. The defendant's sanity or insanity at the time of the alleged offense.

b. Whether the defendant was actually guilty of the offense charged.

c. Whether the prosecution and defense expert psychiatric witnesses agreed upon the

defendant's state of mind.

d. Both a and b.

- \_\_\_\_\_ 4. Which of the following statements is most consistent with the legal definition of insanity?
- a. The defendant was psychotic at the time of the crime.
  - b. The defendant was justifiably enraged by a situation and could not control his impulses at the time of the crime.
  - c. The defendant was mentally ill and because of his illness could not appreciate the fact that his criminal act was wrong.
  - d. The defendant was unable to appreciate the nature and quality of his acts and was unable to appreciate the wrongfulness of his acts.
- \_\_\_\_\_ 5. Which of the following defendants will most likely be acquitted by reason of insanity?
- a. Mr. A because although he knew it was wrong to shoot the crossing guard, he was laboring under a delusion that the crossing

guard was actually the devil.

b. Mr. B because he has been severely mentally ill most of his life and because of his mental illness he thought he was squeezing a lemon but actually he was strangling his wife.

c. Mr. C because when he saw a driver deliberately run over his dog Fido, he lost all control of his impulses and struck the driver with a baseball bat.

d. All of the above.

\_\_\_\_\_6. Which of the following is true about the insanity defense?

a. Sanity is an element of the crime and must be proven by the government.

b. Insanity at the time of the crime must be proven by the defense.

c. The government must show sanity at the time of the trial and the defendant must show insanity at the time of the offense.

d. None of the above.

\_\_\_\_\_7. If a defendant has proven insanity by clear

and convincing evidence this means which of the following?

a. He has countered all reasonable arguments by the prosecution regarding the defendant's insanity plea.

b. The jurors have little doubt that the defendant was insane at the time of the crime.

c. The jurors on balance believe the defendant's expert psychiatric testimony over the government's psychiatric testimony regarding the defendant's sanity at the time of the crime.

d. The defendant has created a firm belief in the jurors' minds that he was insane at the time of the crime.

Appendix K

Sex \_\_\_\_\_ ID \_\_\_\_\_

Comprehension Questionnaire

Instructions: Based on your understanding of the insanity defense from the information you have heard, please place the letter corresponding to the correct statement on the line to the left of each numbered question.

- \_\_\_\_\_ 1. Which of the following statement(s) would necessarily be true if a defendant was found guilty by reason of insanity?
- a. The defendant was unable to appreciate the wrongfulness of his acts at the time of the offense and was unable to assist in his own defense at the time of trial.
  - b. The defendant has a long history of mental illness and the predominant medical evidence indicates his illness will not improve.
  - c. The defendant was incapable of forming the intent required for commission of the crime.

d. Both b and c.

\_\_\_\_\_2. Which evidence below could be considered when evaluating the defendant's insanity plea?

a. The prior planning engaged in by defendant in preparation for the criminal act.

b. The testimony of family members regarding the defendant's bizarre behavior shortly after commission of the crime.

c. Psychiatric opinion testimony regarding the defendant's mental state at the time of the crime.

d. All of the above.

\_\_\_\_\_3. Which of the following would be the material issue in evaluating the defendant's insanity plea?

a. The defendant's sanity or insanity at the time of the alleged offense.

b. Whether the defendant was actually guilty of the offense charged.

c. Whether the prosecution and defense expert psychiatric witnesses agreed upon the

defendant's state of mind.

d. Both a and b.

- \_\_\_\_\_ 4. Which of the following statements is most consistent with the legal definition of insanity?
- a. The defendant was psychotic at the time of the crime.
  - b. The defendant was justifiably enraged by a situation and could not control his impulses at the time of the crime.
  - c. The defendant was mentally ill and because of his illness could not appreciate the fact that his criminal act was wrong.
  - d. The defendant was unable to appreciate the nature and quality of his acts and was unable to appreciate the wrongfulness of his acts.
- \_\_\_\_\_ 5. Which of the following defendants will most likely be acquitted by reason of insanity?
- a. Mr. A because although he knew it was wrong to shoot the crossing guard, he was laboring under a delusion that the crossing

guard was actually the devil.

b. Mr. B because he has been severely mentally ill most of his life and because of his mental illness he thought he was squeezing a lemon but actually he was strangling his wife.

c. Mr. C because when he saw a driver deliberately run over his dog Fide, he lost all control of his impulses and struck the driver with a baseball bat.

d. All of the above.

\_\_\_\_\_ 6. Which of the following is true about the insanity defense?

a. Sanity is an element of the crime and must be proven by the government.

b. Insanity at the time of the crime must be proven by the defense.

c. The government must show sanity at the time of the trial and the defendant must show insanity at the time of the offense.

d. None of the above.

\_\_\_\_\_ 7. Which of the following is true regarding a

defendant's insanity plea?

- a. The defense is an affirmative defense,
- b. The defendant is presumed sane unless the defendant brings forth evidence to the contrary.
- c. A reasonable doubt is based on reason and common sense.
- d. All of the above.

Appendix L

Sex: Male \_\_\_\_\_ Female \_\_\_\_\_. (indicate how many in your jury)

Group Jury Number: \_\_\_\_\_

In the United States District Court  
for the College of William and Mary

United States of America

Plaintiff,

vs.

At Law No. G-

Jeff Arnold

Defendant

Verdict Form

Based on full consideration of the evidence we,  
the jury find unanimously that (check one):

\_\_\_\_\_ The defendant is not guilty by reason  
of insanity.

\_\_\_\_\_ The defendant is guilty of the  
offense(s) as \_\_\_\_\_ charged.

\_\_\_\_\_ We are unable to reach a unanimous  
verdict in

this matter.

Appendix M

Participant Number: \_\_\_\_\_

Sex: Male \_\_\_ Female \_\_\_

Group Jury Number: \_\_\_\_\_

1. Please indicate how you voted as a member of the jury.

\_\_\_\_\_ The defendant is not guilty by reason of insanity.

\_\_\_\_\_ The defendant is guilty of the offense(s) as charged.

2. Was this the same conclusion you reached when you filled out

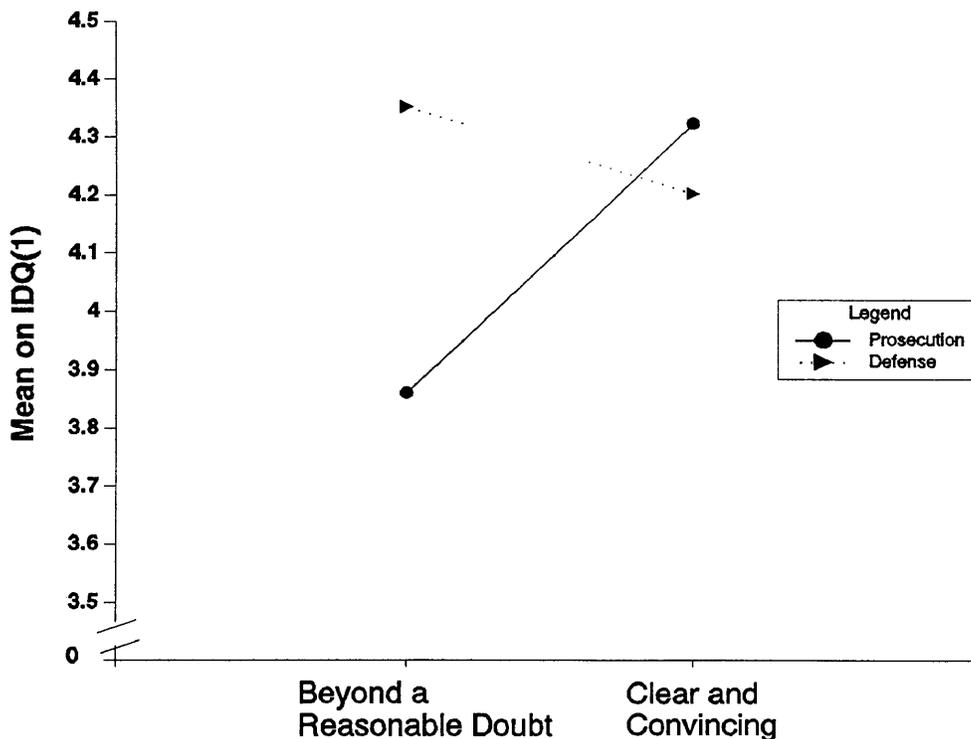
the first verdict form?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

Figure 1

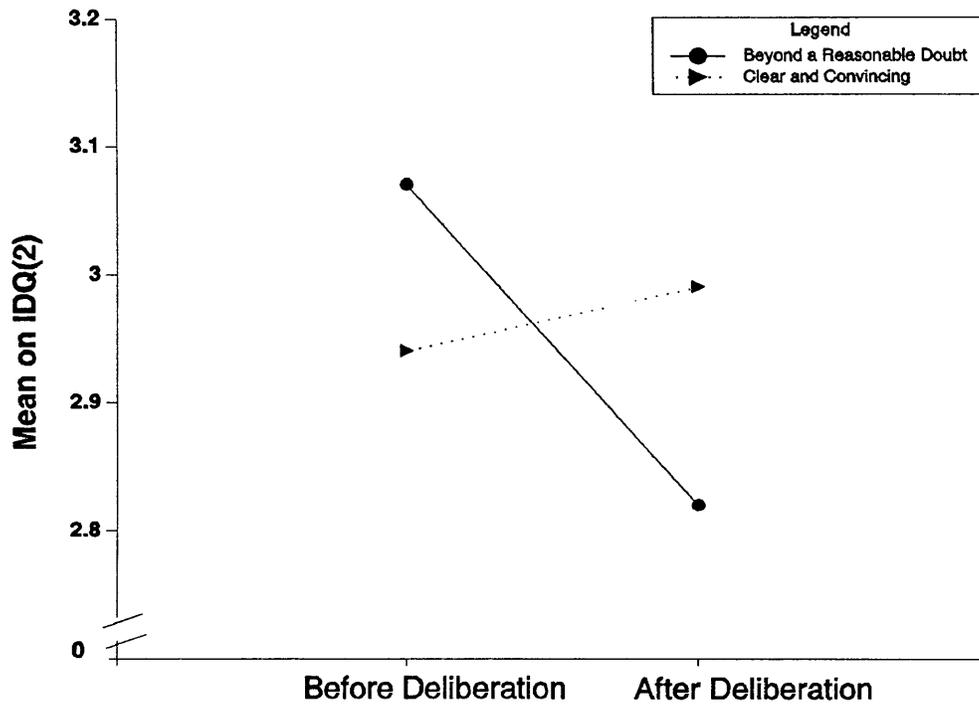
Mean score on IDQ(1)\* as a function of level of proof and burden of proof.



\* The defendant is morally responsible for his behavior.

Figure 2

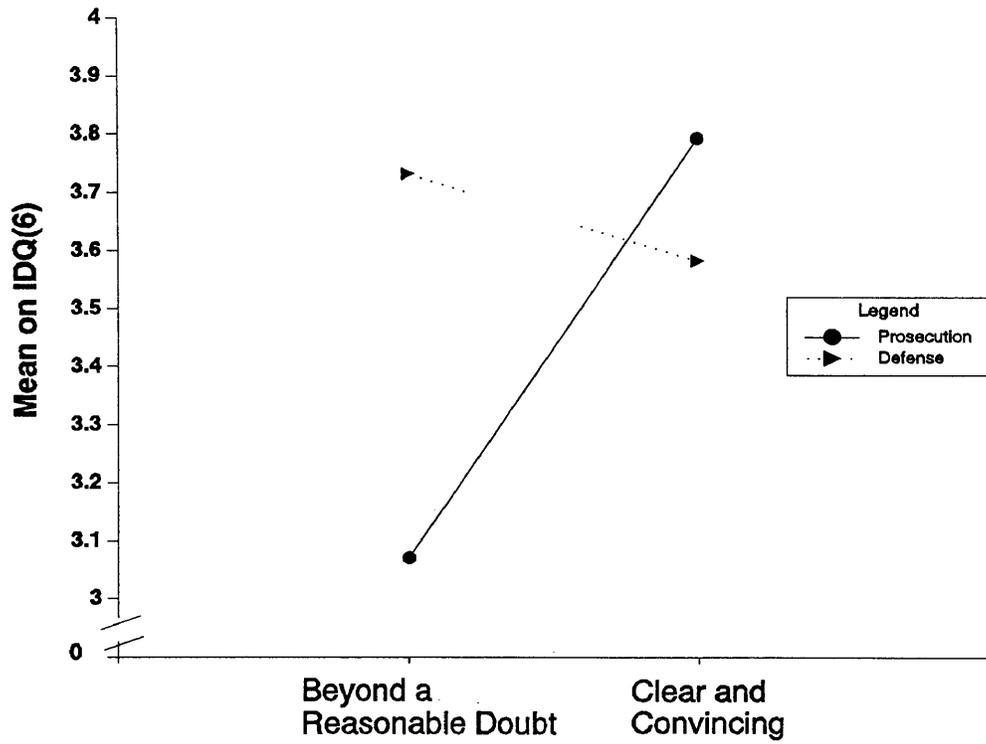
Mean score on IDQ(2)\* as a function of time and level of proof.



\* The defendant should be sent to prison for a long time.

Figure 3

Mean score on IDQ(6)\* as a function of level of proof and burden of proof.



\* The defendant should be in a psychiatric hospital rather than a prison.

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