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### Examining the Impact of Competency to Stand Trial and Judicial Instructions on NGRI Verdicts

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Examining the Impact of Competence to Stand Trial and Judicial Instructions on NGRI Verdicts

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### Abstract

**Objective:** The current study tests whether jury-eligible adults follow judicial instructions to disregard information about a defendant's pretrial competency status when deciding whether he is guilty or not guilty by reason of insanity. **Hypotheses:** It was anticipated, because of the effects of hindsight bias, that defendants who were previously found competent to stand trial would be less likely to be found NGRI than a defendant who previously was deemed incompetent but has been restored to competency for trial. We also predicted that judicial instructions to disregard pretrial competency status would not effectively eliminate the effect of competency status without an accompanying explanation of why it was important to do so.

**Method:** An online convenience sample of jury eligible adults (N = 205) watched a mock trial video in which we varied defendant competency status (competent vs. incompetent) and judicial instructions on how to consider this evidence (no instructions vs. instructions only vs. instructions with an explanation of legal rationale). Jurors gave their verdict (guilty vs. NGRI) and completed a post-trial questionnaire. **Results:** There was a significant effect of competency status; participants were more likely to render guilty verdicts when the defendant had always been competent to stand trial than when the defendant initially had been found incompetent and received restorative treatment. A similar pattern was found for participants' ratings of whether the defendant knew that his behavior was wrong and had the ability to comport his behavior with the law. Standard instructions mitigated the biasing effects of competency to stand trial, which was not the case when the instructions were accompanied by an explanation of the legal standard. **Conclusions:** The pretrial competency status of a defendant affects jurors' decisions even though it is a legally impermissible consideration. Standard instructions may serve a corrective function in improving juror adherence to legal standards. However, instructions which

are too lengthy or too complicated may overwhelm jurors or draw more attention to the irrelevant information, thus increasing its biasing effects.

## Examining the Impact of Competence to Stand Trial and Judicial Instructions on NGRI Verdicts

Implicit in the legal process is the belief that jurors are able to adequately understand and apply legal standards. However, many of the standards which jurors are tasked with following are written in complicated language and often require that jurors consider only very specific information for very narrow purposes. The literature on hindsight bias indicates that it is exceedingly difficult for individuals to discount irrelevant or inadmissible evidence once it has been introduced, a phenomenon known as evidence fusion. This study expands the literature on hindsight bias to insanity defense cases, particularly those in which the defendant was previously found incompetent to stand trial. In these cases, jurors are aware that the defendant's mental illness was severe enough to require hospitalization prior to standing trial, which we hypothesize will make them appear more mentally ill in the eyes of the jury. Although information on defendants' post arrest mental state is not relevant to decisions of criminal responsibility, we predict that jurors' lack of understanding of the appropriate legal standards governing use of information places them at risk of misapplying this particularly salient information, resulting in more Not Guilty by Reason of Insanity (NGRI) verdicts. On the other hand, knowledge that the defendant was originally found competent to stand trial will decrease the perceived severity of their mental illness, resulting in more Guilty verdicts. Judicial instructions explaining which information is relevant for reaching a verdict, as well as why certain information should be disregarded, may help decrease the biasing effect of this information by eliminating conflict between how the jurors think the case should be adjudicated and what the legal standards dictate.

### **Competency to Stand Trial**

Competency to stand trial is a legal construct defined by the United States Supreme Court in the landmark case *Dusky v. United States* (1960). In its decision, the Court set the standard

that a criminal defendant must have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and...a rational as well as factual understanding of the proceedings against him” (*Dusky v. United States*, 1960 p. 402). This decision was intended to protect mentally ill defendants who might jeopardize their freedom if they were to engage in legal proceedings when their symptoms are so severe that they cannot comprehend the legal process, understand their potential case outcomes, or act in their own best interests. In doing so, it also ensures that the defendant’s due process rights are not violated by the state (Melton et al., 2018).

Since the Dusky ruling was passed in 1960, the number of competency evaluations has increased steadily to an average of 60,000 evaluations each year, making defendant competency the most prevalent assessment issue in forensic mental health (Bonnie & Grisso, 2000). Previous studies have found that attorneys typically doubt their client’s competence in approximately 14.8% of cases, choosing to seek an evaluation in 52.6% of these cases (Hoge et al., 1992). This decision is often based on observations of overt signs of mental illness, such as disorganized speech (Berman & Osborne, 1987). Of the individuals who are referred for assessment, roughly 27.5% are adjudicated incompetent (Pirelli et al., 2011). It is important to note that a competency assessment is only concerned with the defendant’s *current* mental state. Findings from this evaluation are not relevant and should not be used when making decisions concerning criminal responsibility or predicting future dangerousness.

Under the Dusky ruling, a defendant whose competence is in question would be evaluated by two independent experts who then advise the judge as to the individual’s current ability to participate in the legal process. Ultimately, it is up to the judge to decide, based on the findings of the forensic evaluators, whether the defendant meets the Dusky criteria. If a judge

determines that defendants are in fact incompetent to stand trial, they will be remanded to a psychiatric facility to receive restorative treatment. The goal of this treatment is not to cure them of all symptoms of mental illness but simply to improve their functioning to the point that they meet the Dusky criteria and their trial can proceed. Once the defendant is deemed competent to stand trial, they will return to court to complete the legal process.

There is currently a dearth of empirical research examining how previously incompetent defendants are perceived by the jury once they are restored and proceed to trial. Incompetent defendants often suffer from severe mental illness or intellectual disability, making them perhaps the most vulnerable individuals in the incarcerated population. As such, it is of vital importance that we ensure these defendants receive fair treatment under the law, and that the information on their mental state post-arrest does not bias the jury. This is especially true when these defendants plead Not Guilty by Reason of Insanity, as these two legal concepts are similar but ultimately distinct.

### **Insanity Defense**

The insanity defense is based on the legal concept of *mens rea*, which means “guilty mind.” In the legal system, *mens rea* refers to the idea that to be found guilty an individual must have the capacity to both understand the repercussions of their actions and the intention to perform them anyway. Much like the question of defendant competency, the question of a defendant’s sanity is only concerned with their behavior during a specific time period. The legal verdict of NGRI refers only to the individual’s mental state *at the time of the offense*. Current or previous signs of mental illness should not be considered when determining criminal responsibility.

The idea of legal insanity dates back to ancient Greek and Hebrew civilizations (Melton et al., 2018) and has continued to evolve over the years. The first formalized definition was given in England by Justice Tracy in 1723, who stated that in order to be found insane, "...a man must be totally deprived of his understanding and memory so as not to know what he is doing, no more than an infant, brute or wild beast" (as cited in Melton et al., 2018, p. 201). The first legal standard for insanity was the M'Naghten rule. Based on the case of Daniel M'Naghten, whose failed attempt at assassinating the Prime Minister resulted in the murder of his private secretary, the House of Lords announced the new rule, stating, "At the time of the committing of the act, the party 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, if he did know it, that he did not know he was doing what was wrong" (R v. M'Naghten, 1843). This rule was widely criticized for its rigidity in focusing only on cognitive impairment and lack of consideration of defendants' abilities to control their behavior, which led to several attempts at reform (Melton et al., 2018; Ogloff, 1991).

In the United States, this reform produced another competing standard known as the irresistible impulse test, which excused offenders from criminal responsibility when their mental illness was so severe that it was seen as the sole cause of their criminal behavior and had stripped them of the agency to control their actions (Melton et al., 2018). This irresistible impulse standard was also criticized for its narrow view, and the issue was again subjected to several rounds of reform. Finally, in 1962, the American Law Institute (ALI) published Model Penal Code 401, which read, "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of

the law” (as cited in Melton et al., 2018, p. 203). The ALI rule was designed to combine the ideas underlying the M’Naghten rule and the irresistible impulse test, while also avoiding their all or nothing approach.

Today, 14 states have adopted the ALI rule, 28 use a derivation of the M’Naghten rule which considers cognitive impairment only, 3 use their own combination of M’Naghten and the irresistible impulse test, and 4 have no insanity defense at all (Melton et al., 2018). Although the legal system has made considerable efforts to clarify and improve the precise definition of the insanity defense, these changes are irrelevant if the standards are not appropriately applied by jurors. Therefore, it is important to understand how well jurors can comprehend the guidelines by which they are to reach a verdict, and if they are able to put aside their own beliefs and values to apply legal standards in a fair and objective manor.

### **Juror Comprehension of Legal Standards**

Jury research has found that there is a pervasive lack of understanding of legal standards, both in general and specifically in regard to insanity defense cases. Thomas (2010) polled jurors from three different courts in various counties in England and found that the percentages of jurors who reported that they easily understood the instructions on the legal standard for self-defense and actual bodily harm were 68%, 69% and 49%. However, when the researchers asked jurors to identify the two questions the legal standard specifically addressed, only 31% of participants answered correctly. Another study used participants who had been called for jury duty in Michigan and compared the comprehension rates for substantive and procedural law between those who served on a civil or criminal case (received instructions) and those who did not serve (did not receive instructions; Reifman et al., 1992). All groups scored below 50% comprehension, with no significant difference between instructed jurors and uninstructed jurors

on understanding of the legal standards. During deliberation, several juries asked the judge for additional information on the substantive laws relating to their case, which raised the average comprehension rate to 67%, an improvement over the performance of those who simply asked for the instructions to be repeated (45%) and those who did not request help (31%). However, participants were hardly ever aware of their ignorance, indicating that they did not know the standard only 10% (criminal cases), 11% (civil cases), and 18% (non-jurors) of the time (Reifman et al., 1992). This false sense of certainty is problematic, as it begs the question of how to make jurors aware of what they do not know so that the judge can correct their misconceptions. The researchers speculated that jurors were intimidated by the judge in the courtroom and were not aware that they have the option to ask questions, resulting in the feeling that they need to simply do the best their best with the given information (Reifman et al., 1992). The researchers recommend that judges explicitly instruct jurors that they may ask questions and encourage them to do so throughout the process.

This lack of juror understanding is just as prevalent in insanity cases (Arens et al., 1965; Elwork et al., 1987; Ogloff, 1991). Juror comprehension of insanity defense standards ranges from 31% to 40% (Arens et al., 1965). Even when the insanity defense standards were rewritten for maximum understanding, comprehension rose only to 51%, only slightly better than chance (Elwork et al., 1987). The repercussions of this lack of understanding are clearly demonstrated in a study that compared the distribution of mock juror verdicts among participants who read either the M’Naghten rule, ALI rule, or received no instruction on how to consider insanity cases (Ogloff, 1991). Ogloff hypothesized that there would be more NGRI verdicts when the ALI rule was used as it “provides for relief from criminal responsibility for both cognitive and volitional reasons” (Ogloff, 1991, p. 510). However, there was no difference in verdict between conditions.

Ogloff (1991) concluded that the participants were not using the official legal standards because they were too complicated for them to understand and apply; thus, participants based their decision on their own internal beliefs and understanding.

Taken together, these findings demonstrate that jurors have an exceedingly difficult time applying the legal standards dictating exactly how they are to reach a verdict. For insanity defense cases in particular, juror confusion results in a reliance on personal understanding and beliefs about mental illness and criminal responsibility, placing jurors at risk for misapplying irrelevant but particularly salient information. It is imperative that researchers and legal scholars gain an understanding of the processes by which jurors consider information presented during trial, in order to develop debiasing techniques which can adequately correct the legal process.

### **Hindsight Bias**

Hindsight bias is a psychological phenomenon in which knowledge of the outcome of a situation significantly increases the perceived inevitability of that particular event occurring in the first place (Fischhoff, 1975). People are not aware of the effect hindsight bias has on their decision-making process, and therefore have a very difficult time imagining how they would have viewed a particular situation without prior knowledge of its outcome (Fischhoff, 1975). This inability to disregard irrelevant and often biasing information has robust and well-documented effects on jurors' decisions in both civil and criminal cases (Casper et al., 1988; Smith & Greene, 2005; Steblay et al., 2006). In one study, undergraduates acted as jurors in a case in which the plaintiff was suing the local police department for damages following an illegal search of his apartment (Casper et al., 1988). The participants were assigned to three conditions that differed on the reported outcome of the search: one found no evidence of illegal activity, one uncovered a stash of illegal drugs, and one did not report the outcome of the search. Participants

were then asked to award damages to the plaintiff. Although the outcome of the search had no relevance as to its legality, mock jurors were unable to disregard this information when making their decision, as indicated by the significantly lower damage awards in the guilty (drugs discovered) condition than both the innocent and not stated conditions (Casper et al., 1988). A similar study examined the impact that knowledge of the extent of the defendant's carelessness and the plaintiff's injury severity would have on judgments of liability and damage awards in a civil negligence case (Smith & Greene, 2005). According to the law, judgements of negligence are based only on an appraisal of the defendant's behavior. However, mock jurors who were aware that the plaintiff was seriously injured increased the degree of negligence that they assigned to the defendant's behavior. Likewise, knowledge of the degree of carelessness with which the defendant acted resulted in increased damages awarded to the plaintiff when compared to jurors who knew only the extent of the plaintiff's injuries, the only relevant information for such a decision. These findings clearly indicate that the jurors were fusing, or misapplying, information that was presented at other points in the trial process and intended to be used for other legal decisions (Smith & Greene, 2005).

This inability to disregard prejudicial information is not limited to evidence that is legally presented. In a meta-analysis of 48 studies, exposure to inadmissible, pro-prosecution evidence resulted in significantly higher conviction rates than in cases where no exposure occurs (Stebly et al., 2006). This effect is still significant even when the testimony is immediately challenged and thrown out. (Stebly et al., 2006).

Taken together, these findings speak to the impact of hindsight bias on legal decision making. Clearly, jurors struggle to disregard irrelevant, or even inadmissible, evidence when forming their verdicts, demonstrating a pervasive inability to imagine how they would have

viewed the issue without exposure to the biasing information. When considering an issue such as the insanity defense, which is already poorly understood (Arens et al., 1965; Elwork et al., 1987), it follows logically that the effects of hindsight bias would be present to the same, if not greater, degree. As jurors struggle to make sense of the complicated legal standards, they often end up using their own personal understanding of insanity (Ogloff, 1991), potentially placing them at greater risk of misapplying particularly salient but legally irrelevant information. For cases in which the defendant was originally adjudicated incompetent to stand trial, this knowledge may result in an increased likelihood that the jury finds them NGRI. As laypeople, jurors cannot be expected to understand that a defendant may have been sane at the time of the crime and severely mentally ill at the time of trial, and vice versa. It is important to understand how knowledge of the defendant's mental state after arrest affects how juries make sense of their mental state at the time of the offense to ensure the legal system is dispensing fair and just verdicts. Further, a deeper understanding of how jurors interpret and apply information is necessary to continue to develop legal practices and debiasing techniques.

### **Judicial Instructions as a Debiasing Technique**

Instructions from the judge are intended to direct and guide the jury as they consider the evidence before them and make an ultimate verdict. However, much like the case of legal standards, juries are often unsuccessful at comprehending, remembering, and applying judicial instructions (Ogloff, 1999; Simon, 2012; Smith, 1993; Smith & Greene, 2005; Steblay et al., 2006). Simon (2012) summarizes the problem by saying, "Jury instructions are often complex, couched in alien terminology, and demanding of unfamiliar and even improbable mental exercises" (p. 174). Jurors often bring their own set of beliefs and schemas into the courtroom, making decisions based on these ideas rather than the legal standards or instructions from the

judge (Ogloff, 1991; Smith, 1993). For example, jurors who received instructions to disregard their pre-existing ideas and not to judge the crime based on how closely it resembled a stereotypical kidnapping performed no better than jurors who did not receive these instructions (Smith, 1993). In the previously discussed study on hindsight bias in civil negligence cases, judicial instructions on what information was relevant did not reduce evidence fusion (Smith & Greene, 2005). A similar study also based on a civil negligence case found that explicit warnings about and encouragements to resist the effects of hindsight bias were ineffective (Kamin & Rachlinski, 1995). A finding of no difference between instructed and uninstructed jurors may in fact be the best-case scenario. In a meta-analysis, instructions to disregard inadmissible evidence actually increased its biasing effect (Stebly et al., 2006). Henderson instructions (given to aid in assessing quality of eye-witness identifications) create a skepticism effect where all eyewitness testimony is seen as inaccurate (Dillon et al., 2017).

Judicial instructions with a rationale explaining why certain information should be ignored or considered are more effective than instructions alone (Eichorn, 1989; Steblay et al., 2006; Wissler et al., 2001). In cases of civil negligence, judicial instructions not to discount damage awards when unsure of the defendants' liability (because then plaintiffs would not receive as much as they should) and not to increase damages when actions were clearly negligent as a way to punish the defendant (because then plaintiff would receive more than they should) decreased bias in both cases (Wissler et al., 2001). Likewise, instructions to disregard inadmissible information had the greatest effect when accompanied by an explanation that the findings either had no bearing, were not relevant, or were unreliable (Stebly et al., 2006). An explanation of the rationale behind the legal standard helps to eliminate conflict between what

the jurors feel is right and what the law dictates (Eichorn, 1989). Essentially, a clear explanation helps the jury to understand the law and put aside their pre-existing beliefs.

### **Present Study**

The present study examined how knowledge that a defendant was previously found incompetent to stand trial affects juror decision making when considering an NGRI. We hypothesized that jurors who are aware that the defendant was found competent to stand trial will be more likely to find the defendant guilty due to misapplication of this information resulting from the effects of hindsight bias. Despite the fact that competency to stand trial is irrelevant to decisions of criminal responsibility, we predicted that jurors would be unable to disregard this information, thus viewing the defendant as less mentally ill than would jurors who were told the defendant was found incompetent and required hospitalization. We also hypothesized that the effects of competency findings would be moderated by judicial instructions. We predicted that instructions coupled with an explanation of why competency findings are not relevant to the NGRI decision will successfully eliminate the effects of pretrial competency status on jurors' decisions but that standard instructions that did not include an explanation would not.

### **Method**

#### **Participants**

Based on a priori power analysis, the study requires a minimum of 158 participants to detect a medium effect with a 0.05 alpha and 0.80 power. To account for missing data, 240 (40 per cell) jury eligible adults were recruited through Amazon Mechanical Turk (MTurk) and compensated \$5.00 each for their time. We excluded 2 participants due to incomplete data, 2 who reported technical difficulties which prevented them from receiving the manipulations, 1 who failed attention checks, and 30 who failed the manipulation check for competency to stand trial. These exclusions resulted in a final sample size  $N=205$ , with cell sizes of either 34 or 35.

We chose not to exclude participants based on failing the judicial instruction manipulation check, as only 38% of participants were able to correctly indicate which instructions they heard. This finding is likely reflective of the lack of juror comprehension that has been well established in the literature on judicial instructions (Ogloff, 1999; Simon, 2012; Smith, 1993; Smith & Greene, 2005; Steblay et al., 2006). However, it is still possible these instructions may act to subconsciously mitigate the effects of competency, and so it is appropriate, and in keeping with recent recommendations for jury research (Cullen & Monds, 2020), to include these data in our analyses.

The participants ranged in age from 24 to 76 ( $M = 44.22$ ,  $SD = 11.741$ ). 52.7% of the participants identified as female (108 female, 95 male, 2 other – non-binary) and a majority of the sample identified as White or European American (84.9% White, 6.8% Black or African American, 5.9% Asian, 2% Hispanic or Latinx, and 0.5% other).

### **Design**

The design of the study had a fully crossed 3 (Instructions: none vs. instructions only vs. instructions with explanation) x 2 (Competency: incompetent vs. competent) between-subjects factorial design. Participants were randomly assigned to conditions. The independent variables are defendant competency and judicial instructions, and the dependent variables are juror verdict and the opinions that contributed to their decision.

### **Materials**

Participants watched a short summary of a mock trial in which the defendant robbed a New York City bank (see Appendix A). The defendant reportedly displayed a knife to the bank teller and left the premises with \$200.00 cash. The case was designed to contain clear signs of mental illness, including a documented history of psychiatric treatment, evidence of delusional

thinking patterns, and odd behavior. However, we also included evidence of planning, organization, and attempts to evade law enforcement to ensure the defendant's symptoms are not so severe that the participants immediately assumed that he meets the legal definition of insanity (previous research in our lab with the same trial stimulus confirms that jurors' perceive the evidence as ambiguous). Participants were informed that the defendant was arrested shortly after the crime and is charged with robbery in the first degree.

After the crime description, participants listened to the judge provide a brief explanation of competency to stand trial. Participants then learned that the defendant was either found competent and detained to await trial (competent condition) or found incompetent, treated in a forensic psychiatric hospital until he was restored to competency, and then transferred to prison to await trial (incompetent condition). Participants then watched excerpts from the trial containing conflicting testimony from expert witnesses in which the defense psychologist argued that the defendant was legally insane, while the psychologist retained by the prosecution argued that the defendant was legally sane. Finally, participants in the two debiasing conditions heard judicial instructions adapted from "Criminal Jury Instructions" (n.d.), in which they were either simply told that information on competency to stand trial was not to be considered in their verdict on sanity (instruction only condition), or were given this same instruction along with an explanation that, as information on competency may create bias for or against the defendant, it is important that this information should not be considered to avoid an unfair verdict (instructions and explanation condition). Participants who were assigned to the no instruction condition proceeded from the trial summary directly to the verdict step.

Participants rendered a verdict (Guilty or NGRI). Once this information was collected, participants answered a series of 5 questions in which they indicated on a 7-point Likert scale the

extent to which they agreed with statements addressing core issues underlying the legal definition of insanity (R indicates variables which were reverse coded so that higher scores indicated higher perceptions of sanity): (1) “the defendant was able to control his behavior,” (2) “the defendant understood that his actions were wrong,” (3 – R) “the crime was a direct result of the defendant’s mental illness,” (4) “the defendant understood the consequences of his actions,” (5 – R) “the defendant has a serious mental illness.” We subjected this data to a principal axis factor analysis with varimax rotation, which indicated that all five variables had loadings  $> .4$  onto a single factor that appeared to measure participants’ perceptions of defendant sanity. We averaged the five variables to create a scale measuring the extent to which the defendant was viewed as sane (Cronbach’s  $\alpha = .905$ ). Analyses indicated that removal of variable five (“the defendant has a serious mental illness”) increased the reliability and so it was deleted from the model, resulting in a final Cronbach’s  $\alpha = .926$ .

Finally, participants answered four multiple-choice, forced answer questions probing them on the defendant’s charges, what diagnosis he received, his competency status, and what instructions they received from the judge. These questions served as manipulation and attention checks.

### **Procedure**

Participants received the survey through the online platform, MTurk. Participants read a short description of the study, stating that they will be asked some questions about a mock trial to gain insight into jury decision making. They electronically signed an informed consent form, and the website directed them to the first page of the survey. Once participants completed the study, they read an electronic debriefing form and received their compensation through MTurk.

### **Results**

### *Data Analytic Strategy*

We analyzed participant's dichotomous verdict decisions using a binary logistic regression with the main effects of defendant competency status (with NCST as the reference condition) and judicial instructions (with Instructions Only as the reference condition) and their interaction entered simultaneously. We also conducted a univariate Analysis of Variance (ANOVA) test to compare the effects of the independent variables on participant ratings of defendant sanity. Based on our *a priori* hypotheses that instructions would moderate the effect of defendant competency status, we performed tests of the simple effects of competency status within instruction type.

### *Verdict*

The logistic regression revealed a significant main effect of competency status (see Table 1). This finding indicates that the odds a participant would find the defendant guilty were 3.7 times greater in the CST conditions (42.2%) than in the NCST conditions (23.3%). Instructions did not have a significant effect on verdict, either as a main effect or in interaction with competency status.

Table 1. *Effects of Manipulated Variables on Guilty Verdicts*

Variables in the Equation	<i>B</i>	<i>SE</i>	Wald	<i>df</i>	<i>p</i>	<i>OR</i>	95% CI for OR	
							<i>Lower</i>	<i>Upper</i>
Competency	1.309	.517	6.402	1	.011	3.704	1.343	10.212
Instructions			5.198	2	.074			
No Instructions vs. Instruct + Explain (1)	.767	.491	2.441	1	.118	2.154	.823	5.64
Standard vs. Instruct + Explain (2)	1.121	.510	4.827	1	.028	3.067	1.129	8.333
Competency x Instructions			2.453	2	.293			
Competency x Instructions 1	-.213	.770	.077	1	.782	.808	.178	3.657
Competency x Instructions 2	-1.121	.750	2.233	1	.135	.326	.075	1.418
Constant	-.288	.342	.709	1	.400	.750		

*Note.* CI = confidence interval; OR = odds ratio. N = 205. Dummy codes were 0 = NCST; 1 = CST; -1 = No Instructions, 0 = Instructions Only; 1 = Instructions & Explanation.

Pairwise comparisons of estimated marginal means using the Generalized Linear Model revealed significant effects of competency status in the No Instructions condition,  $\chi^2(1, N = 205)$

= 4.043,  $p = .044$ , OR = 1.235, 95% CI [1.005, 1.517] and the Instructions with Explanation condition,  $\chi^2 (1, N = 205) = 7.395$ ,  $p = .007$ , OR = 1.359, 95% CI [1.089, 1.695]. These findings indicate that information on competency status resulted in a significant difference in the number of guilty verdicts rendered by participants who either did not hear any instructions from the judge, or who heard instructions not to consider information on competency as it may create undue bias. Participants in the no instruction condition gave more guilty verdicts when participants were initially found competent to stand trial (38.2%) than when they were initially incompetent to stand trial (17.1%). This pattern was the same for participants in the instruction and explanation condition, who also gave more guilty verdicts when the defendant was always competent (57.1%) than when he was initially incompetent (26.5%). This finding is surprising, as we hypothesized that an explanation of the legal standard and the importance of adhering to the law would mitigate the effects of competency status. Instead, this outcome was observed in the Instructions Only condition, as the effect of competency status no longer reached significance,  $\chi^2 (1, N = 205) = .121$ ,  $p = .728$ , OR = 1.039, 95% CI [0.837, 1.289]. Participants who heard instructions alone found the defendant guilty at approximately equal rates regardless of whether he was always competent to stand trial (30.3%) or whether he was initially incompetent (26.5%).

### ***Perceptions of Defendant Sanity***

Using a univariate Analysis of Variance (ANOVA) test, we found a significant main effect of competency status on juror perceptions of defendant sanity,  $F (1, 205) = 9.74$ ,  $p = .002$ ,  $d = 0.44$ , 95% CI [0.203, 0.684]. Participants were more likely to rate a defendant higher on our scale of legal sanity when they heard the defendant was found competent to stand trial ( $M = 3.81$ ,  $SD = 1.86$ ) than when they heard he was initially found incompetent ( $M = 3.03$ ,  $SD = 1.67$ ).

There was no significant main effect of judicial instructions,  $F(2, 205) = 1.113, p = .331, \eta_p^2 = .011$ .

Contrary to predictions, judicial instructions did not significantly moderate the effect of competency status,  $F(2, 205) = 1.382, p = .254, \eta_p^2 = .014$ . Because of our *a priori* hypotheses, we conducted simple effects tests despite the nonsignificant interaction. Competency status significantly affected juror perceptions of sanity within the No Instruction conditions,  $F(1, 205) = 4.237, p = .041, d = 0.517, 95\% \text{ CI } [0.12, 0.91]$ . Participants who did not hear instructions on how to consider competency status were more likely to rate a defendant higher on our scale of legal sanity when he was initially found competent to stand trial ( $M = 3.63, SD = 1.96$ ) than when told he was initially found incompetent ( $M = 2.76, SD = 1.42$ ). In contrast, the judgments of participants who heard standard instructions to disregard pre-trial competency status were unaffected by that status,  $F(1, 205) = .263, p = .608, d = 0.12, 95\% \text{ CI } [-0.29, 0.55]$ . That is, after hearing standard instructions from the judge to disregard evidence on competency to stand trial, participants gave approximately equal ratings of defendant sanity in the CST condition ( $M = 3.53, SD = 1.87$ ) and the NCST condition ( $M = 3.31, SD = 1.68$ ). However, the addition of an explanation to the instructions undid this effect, with competency status having significant effects on juror perceptions of sanity in the Instruction plus Explanation conditions,  $F(1, 205) = 8.142, p = .005, d = 0.676, 95\% \text{ CI } [0.25, 1.1]$ . Much like those who did not receive judicial instructions, participants who heard instructions with an explanation were more likely to rate an initially competent defendant higher on legal sanity ( $M = 4.25, SD = 1.74$ ) than an initially incompetent defendant ( $M = 3.04, SD = 1.89$ ). These findings directly contradicted our predictions, as judicial instructions without an explanation produced a much larger effect size

when compared to the no instructions condition, indicating instructions with an explanation increased the biasing effects of defendant competency status.

## **Discussion**

Our hypothesis regarding defendant competency was supported; we found a main effect of competency status on guilty verdicts. Participants who learned the defendant was always competent to stand trial viewed the defendant as less mentally ill and were significantly more likely to find him guilty than were participants who were told the defendant was initially found incompetent to stand trial and required restorative treatment before proceeding to trial. These findings provide evidence to suggest the jurors are conflating these two similar but legally distinct concepts, creating bias against the competent defendant and for the incompetent defendant. As previously discussed, it is possible for a defendant who was insane at the time of the crime to later be found competent to stand trial, and so this bias may have a detrimental impact on the outcome of their case.

Our hypotheses regarding judicial instructions were partially supported in that instructions moderated the effects of competency status. However, contrary to our prediction that instructions with an explanation of the rationale behind the law would successfully debias the jury, we found that this condition not only failed to remove the biasing effects of competency status, but actually undid the corrective effects observed with instructions alone. Surprisingly, there was no significant difference in the mean ratings of defendant sanity from participants in the instructions only condition, whereas participants who did not hear any instructions displayed a moderate difference in sanity ratings. These findings indicate that instructions alone are sufficient to mitigate the biasing effects of competency status, whereas a more-lengthy explanation may serve to confuse and overwhelm jurors, causing them to rely on salient,

although irrelevant details from the case. Alternately, it is possible that the explanation served to place additional emphasis on competency status, thereby increasing its saliency and making jurors more vulnerable to the effects of hindsight bias.

### **Practical Implications**

Taken together, these findings indicate that jurors are vulnerable to the effects of evidence fusion and hindsight bias when information on competency to stand trial is introduced in insanity defense cases. Ideally, this highly biasing information would not be shared with jurors, but, as all information on a defendant's mental health history becomes admissible once an insanity defense has been raised, this solution may not be realistic at this time. Rather, legal actors and mental health professionals should be sensitive to the biasing effects of this information and refrain from introducing it whenever possible.

In addition, these findings extend the literature on judicial instructions as a debiasing technique by providing evidence that instructions on how to appropriately consider particular information may increase juror adherence to legal standards. However, the finding that judicial instructions with an explanation failed to mitigate the effect of competency status supports previous literature that judicial instructions may be too long or confusing for jurors to adequately comprehend (Ogloff, 1999; Simon, 2012; Smith, 1993; Smith & Greene, 2005; Steblay et al., 2006). It is also possible that a lengthier discussion of why competency status should be disregarded served to draw more attention to the topic, therefore making it more salient in the participants' minds. This phenomenon has been replicated in previous studies which found that instructions to disregard inadmissible evidence actually increased its biasing effects (Steblay et al., 2006). Clearly, further research is necessary to determine the efficacy of judicial instructions as a debiasing technique.

### **Limitations and Future Research**

This study was limited in that it was administered in an online format, and as such we were unable to ensure participants paid adequate attention to the stimulus materials. Although we excluded participants who did not pass key attention and manipulation checks, it is possible that participants missed other important information presented in the videos. In addition, our stimulus presented the trial process in an abbreviated format, which may increase the impact of competency status. It is possible that the full trial process, with an increase in the amount of information presented and time elapsed, may decrease the salience of information on competency to stand trial.

Future research should focus on discovering what factors contributed to increasing the biasing effect of competency status in the Instructions and Explanation condition when compared to the Instructions Only condition. It is possible that instructions and explanations which are simpler, or more general in nature may mitigate this increase in juror bias. Such research would contribute not only to the body of literature on debiasing instructions, but to the understanding of juror comprehension in general.

### **Conclusions**

It has been well established in the existing literature that jurors are vulnerable to the effects of evidence fusion and hindsight bias (Casper et al., 1988; Smith & Greene, 2005; Steblay et al, 2006). This phenomenon is of particular interest in insanity defense cases, which typically involve highly vulnerable defendants and highly salient information related to mental status. This study provides evidence that information on competency to stand trial impacts juror perceptions of the severity of a defendant's mental illness such that defendants who were originally adjudicated competent to stand trial are viewed as less mentally ill and as a result are more likely

to be found guilty than defendants who were initially found incompetent to stand trial. The biasing effects of this evidence are mitigated by judicial instructions alone but enhanced by instructions with an explanation of the legal standards. We hypothesize the instructions serve to increase the saliency of competency to stand trial by spending more time discussing this information, but further research is warranted to investigate this theory and reconcile these findings with previous literature.

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## Appendix

### A. Mock Trial Video Script

#### **Judge: Opening Statement (ALL)**

Ladies and gentlemen of the jury, you have been selected and sworn as the jury to try the case of the State of New York against Thomas Howe. You must keep an open mind. Don't form any opinions or conclusions with respect to the defendant. It is your duty to base your factual judgment on the evidence or lack of evidence in the case and your evaluation of the credibility and weight of the evidence.

I will now read to you some facts about the case. These facts represent a summary of the information on which both the defense and prosecution agree. That is, that at 1:30 PM on November 15, 2016, surveillance footage showed that Thomas Howe entered the Metropolitan Bank and Trust Company in New York City. Mr. Howe stood in line for approximately 15 minutes. During this time, he did not interact with anyone else. At one point, he shifted his posture while standing and the handle of a knife became visible in his pocket. Mr. Howe approached the teller window at approximately 1:45 PM and handed the teller, Melissa Smith, a note that said, "Give me money. I require \$200.00." Ms. Smith testified that Mr. Howe was acting strangely, that she was scared, and that she gave him the money per bank policy. No one else in the bank noticed that a robbery was taking place. Five minutes later, Mr. Howe left the bank, at which point Ms. Smith notified the authorities.

The police arrived to the bank around 2 PM and took statements. By comparing surveillance footage and fingerprints found on the note to DMV records, the police were able to identify Thomas Howe as the suspect. The police obtained an arrest warrant and took him into custody that day.

When Thomas Howe was brought into the police station for questioning, he confessed to robbing the bank. He said he committed the robbery because he believed banks around the world had been taken over by Hitler's family and that the banks were stealing money from Jewish accounts as payback for surviving the Holocaust. Mr. Howe said that after he left the bank, he went home and ripped up the \$200 and then flushed it down the toilet. A plumber was able to retrieve torn pieces of currency from the pipes that had serial numbers matching the money stolen from the bank.

#### **Judge: Pre-Trial Motion Summary (CST)**

Before trial, Mr. Howe's attorneys filed a motion to have their client evaluated for competency to stand trial. Competency is a legal term which addresses whether defendants have the mental capacity to understand the legal process, the charges against them, and the ability to

work with their attorney. This standard is put in place to protect a mentally ill defendant from jeopardizing their freedom due to severe symptoms of their illness.

Mr. Howe was assessed by two independent psychiatrists at Kirby Forensic Psychiatric Center, who testified that he exhibited signs of schizophrenia. These symptoms included disorganized and odd speech, flattened emotion, and paranoid delusions. Based on the extent of his symptoms, the judge concluded that Mr. Howe was competent to stand trial and transferred him to Riker's Island to await his court date.

**Judge: Pre-Trial Motion Summary (NCST)**

Before trial, Mr. Howe's attorneys filed a motion to have their client evaluated for competency to stand trial. Competency is a legal term which addresses whether defendants have the mental capacity to understand the legal process, the charges against them, and the ability to work with their attorney. This standard is put in place to protect a mentally ill defendant from jeopardizing their freedom due to severe symptoms of their illness.

Mr. Howe was assessed by two independent psychiatrists at Kirby Forensic Psychiatric Center, who testified that he exhibited signs of schizophrenia. These symptoms included disorganized and odd speech, flattened emotion, and paranoid delusions. Based on the extent of his symptoms, the judge concluded that Mr. Howe was not competent to stand trial and referred him to treatment in a psychiatric hospital. Mr. Howe was assessed again after a period of 70 days, after which the judge found that Mr. Howe was competent to stand trial and transferred him to Riker's Island to await his court date.

**Judge: Lawyer Introduction (ALL)**

At this point in the trial, the attorneys for both the State and the Defense will offer their opening statements. Opening statements are not evidence, but instead serve as guides. After the opening statements, several expert witnesses will take the stand and offer their professional opinions on the case. After the People and the defense both rest, each side may make a closing argument. Closing arguments are not evidence and are presented for the purpose of persuasion only.

**Prosecutor: Opening Statement (ALL)**

Good morning, ladies and gentlemen. My name is David Jones, and I am representing the State of New York. The defendant, Thomas Howe is on trial for the crime of robbing a bank by force on November 15, 2011. What we intend to show in this case is that the defendant knowingly and willfully robbed the Metropolitan Bank and Trust Company. What we intend to show in this case is that the defendant planned a visit to the Metropolitan Bank and Trust Company on that day to steal money from the bank, even bringing along a knife to help him carry out the act. Mr. Howe went into the bank, stood in line, and then handed the bank teller a note demanding money. He took the money, rushed out of the bank, and then hurried home to avoid the police. When the police showed up anyway, Mr. Howe, fearing the repercussions of being found with the money, ripped the money to shreds and flushed it down the toilet.

You will hear evidence that although Mr. Howe has been diagnosed with schizophrenia, he was perfectly able to understand his actions. His mental illness, ladies and gentlemen, did not

impair his ability at the time that he robbed the Metropolitan Bank and Trust Company. That was a decision that he made, fully conscious of what was happening. He made a plan and executed it of his own volition.

The defendant has the burden of proving the defense of insanity. I believe you will find evidence to support this defense to be insufficient. At the conclusion of all of the evidence, I will ask you to hold the defendant accountable for his actions. Thank you.

**Defense: Opening Statement (ALL)**

Good morning. This case is about thirteen years of deterioration of a young man's mind. Ladies and gentlemen, this all began with a head injury at age 16. Before that time, Mr. Howe was a bright child, popular, outgoing, and gifted in school. But after that injury, Thomas Howe has slipped further and further into mental illness.

Thomas Howe is not a bad man. He is a very sick, mentally ill young man. The central issue in this case is Mr. Howe's state of mind at the moment that he passed the note to Ms. Smith and subsequently took the money. That day, November 15, 2011, we know that Mr. Howe's judgment and insight were poor. On this particular day, he was not in touch with reality. He thought the bank was stealing money from Jewish people. He felt it was his duty to retrieve the money that had been wrongly taken. And then, to prevent the bank from getting the money back or it being used wrongly in the future, Mr. Howe ripped the money up and flushed it down the toilet. Those are not the actions of a man who is seeking to steal money for his own gain.

Mr. Howe simply cannot be found guilty for committing a crime that he did not know he was committing and was not capable of understanding due to his delusions. I plan to prove that Thomas Howe is not responsible, not because it's an easy conclusion to reach, but because it's the right conclusion. Thank you.

**MH Information (ALL)**

*You will now hear an extract from the testimony of Dr. Donald Randall, head of the psychiatry department at St. Vincent's Hospital. Dr. Randall is an expert on Schizophrenia and assessed Mr. Howe two weeks before the robbery took place.*

Defense: Dr. Randall, did you evaluate Mr. Thomas Howe on October 30<sup>th</sup>, 2011?

Randall: Yes, he was brought in for a psychiatric evaluation by his mother who seemed very concerned for his wellbeing. I immediately noticed his disorganized behavior. He seemed distracted and unresponsive to my questions. He was staring into space, grabbing at air, knocking his knees together, and seemed agitated and defensive.

Defense: Dr. Randall, what was your diagnosis for Mr. Howe?

Randall: Well, after completing a thorough evaluation it became apparent to me that Mr. Howe suffers from an illness known as schizophrenia.

Defense: Now Dr., I want to ask you in very general terms, please describe for this jury what is schizophrenia?

Randall: Okay. Schizophrenia is a brain disease that causes mental symptoms. It results in severe disruption of almost all mental functioning and is considered perhaps the most serious of all mental illnesses. The core symptoms include hallucinations, which are perceptions that have no basis in reality, such as hearing voices when no one is there or seeing images or visions when nothing is in front of your eyes. These are considered very serious symptoms of psychosis. Another core symptom is experiencing delusions, which are false, fixed beliefs that are held with very strong conviction, even though they have no basis in reality. An example of a delusion is a paranoid thought that somebody is trying to kill you. Another core symptom is thought disorder. Patients with schizophrenia say that they can't get their thoughts straight, they can't think properly or reach logical conclusions. They get confused and their speech is often hard to understand or illogical because their thoughts are jumbled.

**Defense Expert – NGRI (ALL)**

*You will now hear an extract of testimony by Dr. Spencer Wilson. Dr. Wilson is a Professor of Psychology at New York University (NYU) and Clinical Director of the Psychology Department at Bellevue Hospital in New York City. Dr. Wilson holds a B.A. in Psychology from Johns Hopkins and a PhD in Clinical Psychology from Harvard University.*

Defense: And did you give Mr. Howe a diagnosis after your evaluation?

Wilson: Yes, I gave him the diagnosis of Schizophrenia, chronic and undifferentiated.

Defense: And you said you reviewed documents related to the offense... What was significant in the police records?

Wilson: According to the statement by the bank teller, Mr. Howe was behaving strangely and making her feel nervous. At some point after his arrival home, he ripped up the money and flushed it down the toilet. During interrogation, Mr. Howe reported that he took the money because of a conspiracy against the Jewish people. He apparently believed that the banks were stealing money from Jewish bank accounts as payback for surviving the Holocaust.

Defense: And what does this behavior tell you?

Wilson: It indicates that Mr. Howe was in the middle of an episode where he was having difficulty thinking coherent thoughts. Mr. Howe's behavior during the episode was not logical or rational.

Defense: And what did Mr. Howe say when you asked him why he took the money?

Wilson: He was defensive when I spoke with him. He kept refusing to answer my questions and referring me to his lawyer instead. However, he did indicate that he knew he stole the money from the bank.

Defense: Is it common that individuals raising the insanity defense would be defensive during the interview?

Wilson: Yes, if part of the mental illness includes paranoia. And from the records it appears that has been a feature of Mr. Howe's mental illness for many years. It would be consistent with paranoia to avoid answering questions that he feels may harm him.

Defense: Can you judge whether somebody was likely to appreciate the wrongfulness of their actions?

Wilson: We have to look at Mr. Howe's behavior at the time of the alleged offense, it suggests that Mr. Howe did not think that what he was doing was wrong. Mr. Howe requested a very small amount of money, that kind of odd behavior is very typical of psychotic thinking. If Mr. Howe was robbing the bank for his own gain I would expect him to request a much higher amount. Instead, given his delusion about the Jewish people, it appears Mr. Howe believed that what he was doing was right, that he was providing proper compensation for a group of people who had been wronged.

Defense: And is it rational behavior to steal money and flush it down the toilet?

Wilson: No, it is not. It is further evidence of Mr. Howe's psychotic thinking at the time of the alleged offense.

Defense: Can you render an opinion with a reasonable degree of scientific certainty whether this mental illness significantly impacted Mr. Howe's appreciation of the wrongfulness of his actions the day of the alleged offense?

Wilson: Yes, it is my opinion that Mr. Howe was unable to appreciate the wrongfulness of his actions on the day in question because he was operating under a major mental illness.

Defense: And what is the basis for that opinion?

Wilson: The core question is how much Mr. Howe's delusions factored into his understanding of wrongfulness. This delusion about the Jewish bank accounts lead to Mr. Howe's behavior and interfered with his ability to appreciate that his behavior was wrong. He thought was protecting the Jewish people, and so he felt his behavior was morally justified.

Defense: Thank you Dr. Wilson, nothing further.

**Prosecution Expert – Guilty (ALL)**

*You will now hear an extract of testimony by Dr. Edward Jones. Dr. Jones is a Professor of Psychology at Columbia University and Clinical Director of the Psychology Department at Mount Sinai Hospital in New York City. Dr. Jones holds a B.A. in Psychology from Cornell and a PhD in Clinical Psychology from Yale.*

Prosecution: For what issue were you retained in this particular case?

Jones: I was retained by the state to evaluate the defendant and come to an expert opinion as to his criminal responsibility at the time of the alleged bank robbery.

Prosecutor: And with a reasonable degree of scientific certainty, did you reach an opinion as to the defendant's awareness of his acts at the time when he robbed the bank and whether he knew that it was right or wrong?

Jones: Yes.

Prosecutor: And can you tell us with a reasonable degree of scientific certainty what your opinion was or is?

Jones: I believe that Mr. Howe fully understood the nature and consequences of his actions on that date at that time.

Prosecutor: What is your opinion as to whether he knew that it was wrong?

Jones: I feel that he did know that it was wrong.

Prosecutor: And did you arrive at a diagnosis for Mr. Howe?

Jones: Yes, I agreed with the diagnosis of chronic, undifferentiated schizophrenia.

Prosecutor: And does having a diagnosis of schizophrenia necessarily mean that person is unable to appreciate the nature and quality of his actions or know that his actions are wrong?

Jones: Absolutely not. Many, many factors play into whether someone would be unable to appreciate their actions. You would have to consider the type and severity of the symptoms the person is suffering from.

Prosecutor: And are you aware of the symptoms that Dr. Wilson discussed earlier?

Jones: Yes, he mentioned auditory and visual hallucinations, repetitive behaviors and lack of emotions. He also characterized Mr. Howe's unwillingness to cooperate as a sign of paranoia.

Prosecutor: To a reasonable degree of scientific certainty, can you tell us if there are alternative explanations for these behaviors?

Jones: Well, I do not think that anyone disagrees that Mr. Howe has a mental illness. The part I question is the extent to which the disease impacted his behavior. Mr. Howe refused to cooperate during the interview. He repeatedly referred me to his attorney and said that his attorney is there to prevent him from getting hurt. That signifies to me that Mr. Howe knew what he was doing was wrong and was purposefully not cooperating to avoid getting into trouble.

Prosecutor: And did a time come when he talked about taking money from the bank?

Jones: Well as I said, Mr. Howe largely refused to cooperate. Mr. Howe did tell me that he took the money because he needed the money, and that he felt good about it. He did not mention the Jewish people or a conspiracy at any point during our two meetings together.

Prosecutor: You did say that you reviewed accounts of the crime, correct?

Jones: Yes, I reviewed the police report.

Prosecutor: And to a reasonable degree of scientific certainty, were there any behaviors described in the police report which suggest Mr. Howe was aware of his actions and able to appreciate the wrongfulness of what he was doing?

Jones: I believe so. See, Mr. Howe brought a knife to the bank, which suggests to me that he was aware there may be a degree of resistance in taking the money. This would indicate that he knew his actions were wrong. Mr. Howe then rushed out of the bank after the robbery and went straight home, indicating that he appreciated what he was doing was wrong and wanted to avoid capture. I think Mr. Howe's efforts to avoid apprehension show that he did not feel justified in his actions and wanted to avoid capture for breaking the law. Mr. Howe also ripped up the money and flushed it down the toilet. Mr. Howe, in my opinion, was trying to hide the evidence of what he had done, which is consistent with the rest of his post-robbery behavior. Mr. Howe could have tried to return the money to the rightful owner, but he instead chose to destroy it. That suggests he knew there was no rightful owner in the first place. He knew it was not his money and he did not attempt to return the money to anyone else. He stole it for his own gain but destroyed it when he thought he might get caught.

Prosecutor: Do you have an opinion as to whether Mr. Howe's delusions are genuine?

Jones: I believe Mr. Howe's delusions are genuine, but that still does not mean Mr. Howe is not responsible. People with delusions can still understand right from wrong. Delusional thinking does not impair the ability to acknowledge that the money was the bank's and not his own. It is a big leap in logic that the next step in Mr. Howe's delusion that it is his job to take the money and destroy it. We simply cannot blame his behavior on his delusion. Just because somebody commits a poorly thought out crime does not mean they did not understand that they were committing the crime.

Prosecutor: Thank you, no further questions.

### **Lawyers' Closing Statements (ALL)**

*Now that both sides have presented their evidence, you will hear the closing arguments from both the defense and the prosecution. Each side will take this opportunity to summarize their arguments and attempt to sway your opinion.*

Prosecution: Thomas Howe is mentally ill. However, as you witnessed during the presentation of the evidence, he still knew right from wrong. He planned this act by writing the note demanding money before he walked into the bank, and by bringing a weapon. He wanted

money, and he got it. He clearly knew what he did was wrong because he tried to destroy the evidence of his crime. Thomas Howe is claiming he couldn't control himself because he thinks he can get away with it. He has a mental illness yes, but his behaviors show he knew right from wrong. He knew it was wrong to steal money because he ran from the bank. He knew it was wrong to steal money because he ripped it up and flushed it down the toilet to hide it from the police. A man who didn't think he was doing wrong would not have done those things. With people like Thomas how abusing the system in this way, how can we protect our citizens? He needs to be found responsible for this crime. Thank you.

Defense: Ladies and Gentleman, Thomas Howe has schizophrenia. He has received this diagnosis from Dr. Donald Randall, and he has the classic symptoms of this disease. As his illness has become progressively worse, Mr. Howe has had difficulty maintaining employment and basic functioning that we all take for granted. His mother took him for evaluation just two weeks before this incident, when she felt his symptoms were getting worse. The law states that a person is not responsible for their actions if they do not comprehend the nature and the consequences of their action, or if they do not know that action is wrong. At the time of the event at the Metropolitan Bank and Trust Company, Thomas Howe did not know the nature of his actions. He thought he was doing the right thing, the moral thing. He did not understand that he would be condemned for taking back money he thought rightfully belonged to the Jewish people. It would be unlawful to find Thomas Howe responsible for these actions. This was an unfortunate event, but Thomas Howe belongs in a hospital where he can get help. Not in a prison cell. Thank you.

### **Closing Statement (ALL)**

Jurors, before you deliberate I have to explain the rules of law. You are the judges of the facts and it is your sworn duty to make your factual determinations based on the evidence in the case. Follow the law as I instruct you and not just what you might personally think is just. Now you may have sympathies, acknowledge them, and put these feelings and opinions aside. The value of the evidence is a factual question for you the jury. If you find the evidence credible, you must give it whatever weight you consider appropriate.

The defendant has raised the affirmative defense that he is not criminally responsible by reason of mental disease or defect. The defense has the burden of proving this lack of criminal responsibility. The defense must prove that the defendant was not criminally responsible by what we call a preponderance of the evidence. This defense is proved by a preponderance of the evidence when the jury is satisfied that the evidence of lack of criminal responsibility outweighs and is more convincing than the evidence that he was criminally responsible when he committed the crime. This does not require evidence beyond all reasonable doubt.

### **(INST & INST+EXP)**

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant, including but not limited to:

- opinions of psychiatric witnesses
- prior hospitalizations of the defendant
- hospital and other medical records
- the nature and manner in which the crime was committed

When making your decision, you are to disregard all evidence related to the defendant's mental state during his incarceration, including the ruling on his competency to stand trial. This information is not relevant to the question of criminal responsibility, as the law is only concerned with his mental state at the time of committing the offense.

**(INST+EXP ONLY)**

This is important information on the defendant's competency status could bias your decision and result in a miscarriage of justice. If you develop biases against the defendant, you might unduly punish him by finding him guilty and sending him to prison. If you develop biases that favor the defendant, you might show him too much leniency, which would prevent the legal system from administering punitive and deterrent measures, while also denying the victims the justice they deserve.

**Closing Statements Cont. (ALL)**

Again, it is your duty as jurors to be open-minded. Each of you must decide the case for yourself, but only after impartial consideration of the evidence. Thank you.

**B. Survey**

Imagine you are a juror on this case. Considering all the evidence presented by both the prosecution and the defense, what verdict would you give to the defendant?

- Guilty
- Not Guilty by Reason of Insanity

Please click "next" when you are ready to continue.

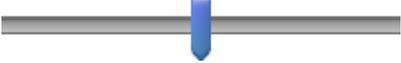
**You cannot return to this page.**

**Reasons Guilty/NGRI**

You voted to find the defendant **guilty/NGRI**. Please answer the following questions on your opinions and impressions about the case.

On a scale from 1 (not at all) to 7 (completely) please indicate the extent to which you agree with

the following statements:

	1 2 3 4 5 6 7
The defendant was able to control his behavior.	
	1 2 3 4 5 6 7
The defendant understood that his actions were wrong.	
	1 2 3 4 5 6 7
The crime was a direct result of the defendant's mental illness.	
	1 2 3 4 5 6 7
The defendant understood the consequences of his actions.	
	1 2 3 4 5 6 7
The defendant has a serious mental illness.	

Please click "next" when you are ready to continue.

**You cannot return to this page.**

Please answer the following questions on your opinions and perceptions of the case.

- With what crime was the defendant charged?  
 Breaking and Entering      Robbery      Murder      Shoplifting
- At the beginning of trial, the judge said the defendant was evaluated for competency to stand trial. At that time, was he found:  
 Competent      Incompetent
- With what mental illness was the defendant diagnosed?  
 Depression      Anxiety      Schizophrenia      OCD
- Which of the following instructions did you receive from the judge? **Select all that apply.**
  - Jurors must be unbiased when making their decisions.
  - Jurors must determine whether they are convinced based on a preponderance of the evidence.
  - Jurors should not consider information on competency to stand trial when making

- their decision.
- d. Information on competency might create unfair biases for or against the defendant.

Please click "next" when you are ready to continue.

**You cannot return to this page.**

### **Demographics**

Finally, please tell us a little about yourself.

1. What is your age?

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2. What gender do you identify with?

Female

Male

Other \_\_\_\_\_

3. With which race or ethnicity do you most closely identify?

American Indian or Alaskan Native

Asian

Black or African American

Hispanic, Latino, or Latina

Native Hawaiian or Pacific Islander

White or European American

Other \_\_\_\_\_

4. What is the highest level of formal education you have completed?

- Less than high school
- High School degree or equivalent
- Some college or trade school
- College or trade school degree
- Post graduate degree