



Crime & Punishment

James Alan Fox on criminal behavior and the justice system

The insanity defense for Odgren – crazy or creative?

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The trial of John Odgren is beyond-a-reasonable-doubt proof that the Massachusetts murder statute is ill-equipped to deal with special cases--special cases like a 16-year-old alleged murderer who has Asperger's disorder and a history of hyperactivity.

Unfortunately, Massachusetts law governing this case is exceptionally rigid. When the charge is murder, defendants as young as 14 are to be treated no differently than fully-matured adults. A conviction of first-degree murder means an automatic sentence of life without eligibility for parole.

This legislation was passed on Beacon Hill in 1996 in the wake of the exceptionally brutal murder committed by 15-year-old Eddie O'Brien. Previously, juveniles charged with murder faced a prison term of 20 years. Extreme measures legislated amidst a climate of anger tend to be excessively punitive. (For more background, see my *Boston Globe* [op-ed](#) piece from 2007 on Odgren and the murder statute).

There is much about Odgren's background and behavior that may have made people nervous. Notwithstanding his extreme intelligence (not uncommon for those with Asperger's), he was fascinated with violence. He loved to read murder stories and was enamored with knives. These "warning signs," however, only became crystal clear in the aftermath. As is often the case, yellow warning flags only turn red after the blood has spilled.

Given that the state's murder statute leaves absolutely no wiggle room, defense counsel is left with few options. At the outset before expert testimony is heard, raising an insanity defense would seem to be a long shot, but it may be the only shot.

In general, the prospects for an insanity claim are rather slim. Not only are juries often skeptical, but the legal definition of insanity is somewhat narrow, and not necessarily aligned with psychiatric definitions of illness. That is, mental illness and conditions such as Asperger's do not usually impair one's ability to appreciate the criminality of conduct or to conform conduct to the requirements of the law.

This is not the first time that Asperger's will have been used as a basis for an insanity claim. In 2009, for example, former astronaut Lisa Nowak entered an insanity defense to charges of attempted kidnapping, battery and burglary with assault against her romantic rival, but subsequently plead guilty. In 2008, Asperger's was also introduced--unsuccessfully so--during the trial of software engineer Hans Reiser who was accused of killing his wife.

Should the jurors not be convinced that Odgren lacked the ability to understand his actions or behave according to the law, they may still have an option of convicting him of a lesser charge, such as manslaughter. Juries are known at times to ignore the law as written--so called "jury nullification"--and show compassion for special cases like this.

But, let's not get too far ahead of the evidence. Just as the jurors are instructed to do, we should all keep an open mind as we see what unfolds over the next couple of weeks. I will be watching, and commenting on developments as the trial proceeds...but, of course, always with the presumption of innocence.