



# Crime & Punishment

James Alan Fox on criminal behavior and the justice system

CRIMINAL LAW AND PROCEDURE

## A crazy approach to insanity

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Many eyes are focused on the ongoing trial of 21-year-old Christopher Gribble, charged with viciously murdering Kimberly Cates of Mont Vernon, NH and mercilessly terrorizing her 11-year-old daughter Jaime, to see what kind of punishment the confessed killer will receive. Trial watchers are keenly focused specifically on the outcome of his insanity claim. This is because New Hampshire stands apart as unique in its approach to this issue.

Procedures and definitions pertaining to the insanity defense vary somewhat from state to state. Some jurisdictions, like Massachusetts, require the prosecution to show that a defendant who has raised an insanity claim is in fact legally sane, while about two-thirds of the states have in recent years shifted that heavy burden of proof over to the defense. Most states employ a cognitive assessment of whether the defendant understood what he or she was doing at the time of the offense and could appreciate the difference between right and wrong (the so-called M'Naughtan rule), and some also consider the question of whether the defendant could control his or her urges (the so-called Irresistible Impulse test).

New Hampshire, however, has steadfastly held to a very different standard of insanity prescribed by the so-called Durham rule, first formulated in 1871. According to this approach, a defendant is not criminally responsible if his or her conduct was the product of a mental disease or defect. This broader criterion incorporates psychiatric impairments other than those affecting cognition (as in M'Naughtan) and volition (as in Irresistible Impulse) -- conditions such as emotional disorders (e.g., depression) or even character disorders (i.e., antisocial personality).

In striving to be as flexible as possible in determining insanity, New Hampshire leaves the interpretation of mental disease and its impact on criminal behavior entirely in the hands and discretion of the jury. In the absence of any clear-cut guideline, juries go with their gut. And for most citizens serving as jurors, instinct says convict.

From my point of view, even as one who believes in the appropriateness of the insanity defense, Gribble should not qualify. Defense experts contend that he is a sociopath, and that his long-standing antisocial personality can be traced to a dysfunctional, even abusive, home environment. This diagnosis wouldn't be considered legal insanity in the 49 states outside of New Hampshire, and it shouldn't in New Hampshire either.

Sociopathy is a disorder of the character, not of the mind. Sociopaths are bad, not mad -- crafty, not crazy. They fully understand what they are doing. They can control their impulses, but simply choose not to do so. Their crimes bring them too much pleasure, even at their victims expense. This should not mitigate criminal responsibility in the least. I am confident the jury in Nashua will be similarly predisposed.

In an on-line chat for WMUR-TV, former NH Assistant Attorney General Kirsten Wilson has endorsed the state's jury-discretion model: "I am pretty partial to the NH insanity test. While it recognizes that there are valid mental health issues in many defendants, it doesn't turn over the reins to experts. It allows citizens to apply their common sense and make a judgment based on any and all evidence presented at trial."

Even though I will be very comfortable should Gribble's claim be rejected by the jury, I remain deeply troubled that in New Hampshire, as in other states, ordinary men and women who are untrained in psychiatry, are given the responsibility of final making the diagnosis. As I have [argued before](#), this is precisely where courts should utilize a professional jury a panel of specialists in medicine, criminology and law to decide those issues that are beyond the training and intellectual capacity of most jurors. Let traditional juries remain the triers of fact, and assess guilt or innocence. But when it comes to technical matters like insanity, it is crazy to allow jurors to rely on emotion when their knowledge-base is not up to the task.

Note: I wish to acknowledge [Professor Richard Moran](#) of Mt. Holyoke College who was relentless to determine the correct spelling of Daniel McNaughtan's name.