

COEXISTING DEFINITIONS OF MENTAL ILLNESS: LEGAL, MEDICAL, AND LAYPERSON UNDERSTANDINGS PAVING A PATH FOR JURY BIAS

SAREEN K. ARMANI*

ABSTRACT

There are three coexisting definitions of mental illness within American society: layperson, medical, and legal. These three understandings and the discrepancies between them lead to injustice in the legal system. In particular, the jury, as laymen, largely see mental illness through a lens of inaccurate, media-instilled stigmatizations. The inconsistencies between the three definitions call into question a jury's ability to decide on the matter of "legal" insanity, and thus jeopardize the accused's due process right to a fair trial. This Note analyzes the problems resulting from the co-existing definitions of mental illness present in the minds of the jury when determining a legal insanity defense. A multifaceted approach is proposed to bridge the gaps between the tripartite understandings of mental illness. First, this Note proposes to increase positive media portrayals of mental illness that are more in line with actual medical definitions to break down stigma. Second, this Note argues that the legal terms associated with mental illnesses, such as "legally insane," should be replaced with words without negative connotations to decrease the likelihood of jurors mistaking a defendant's legal status for a personal characteristic. Third, this Note recommends that public school systems should require a high school general psychology education class in order to educate future generations on accurate definitions of mental illness. Fourth, this Note suggests that courts should use mandatory jury instructions, along with experts, to increase juror awareness of the problems associated with the three definitions. This multifaceted approach would help mitigate jury bias in legal insanity deliberations.

* Class of 2017, University of Southern California Gould School of Law, B.A. Sociology, New York University. Thank you to my Note supervisor, Elyn Saks, who gave me the chance to research this topic through the USC Saks Institute. It is my hope that this paper will serve to help eliminate bias in the court room and promote equality.

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I. INTRODUCTION

Media is a powerful tool that can be used either positively, to knock down stigmas and fight for equality, or negatively, to create and reinforce stigmas that result in injustice. In a consumerist society, media is generated by market-driven ideals of newsworthiness. The media decides what kind of content is most worthy of publicity. The media’s power to pick and choose through its content selection process creates social hierarchies. Such hierarchies decide either what is right, coveted, and normal, or what is wrong, outcast, or strange. The media has repeatedly shown mental illness as a category in the hierarchy that is wrong, outcast, or strange. Such

misportrayals of mental illnesses skew public opinion by marginalizing those with mental illnesses as non-functioning, crazy, and violent. These media portrayals stand at odds with both actual medical definitions of mental illnesses and legal definitions of insanity.

There are three coexisting definitions of mental illness within American society: layperson, medical, and legal.¹ These three understandings and the discrepancies between them lead to injustice in the legal system. In particular, this misalignment creates inequality during criminal trials of the medically mentally ill. The jury, as laymen, largely see mental illnesses through a lens of inaccurate, media-instilled stigmatizations and may not even realize that differences exist between medical, legal, and layperson definitions of mental illness. However, such differences are vital during deliberations when determining a legal insanity defense. The inconsistencies between the three definitions call into question a jury's ability to decide on the matter of "legal" insanity, and thus jeopardize the accused's due process right to a fair trial. For example, due process rights would be violated if misinformed jurors wrongly found a defendant not legally insane by using their own biased misunderstandings rather than the correct, legal definitions of legal insanity².

This Note analyzes the problems resulting from the co-existing definitions of mental illness present in the minds of the jury when determining a legal insanity defense.³ A multifaceted approach is proposed to bridge the gaps between the tripartite understandings of mental illness. First, this Note proposes to increase positive media portrayals of mental illness more in line with actual medical definitions, so as to break down rather than build up stigma and stereotypes. Second, legal terms associated with mental illnesses, such as "legally insane," should be replaced with words without negative connotations to decrease the likelihood of jurors

¹ Kirstin Fawcett, *How Mental Illness is Misrepresented in the Media*, U.S. NEWS AND WORLD REPORT (Apr. 16, 2015, 10:51 AM), <http://health.usnews.com/health-news/health-wellness/articles/2015/04/16/how-mental-illness-is-misrepresented-in-the-media>; Medline Plus, *Mental Disorders*, U.S. National Library of Medicine, <https://medlineplus.gov/mentaldisorders.html>; Legal Information Institute, *Insanity Defense*, Cornell U. L. SCH., https://www.law.cornell.edu/wex/insanity_defense.

² Kristina Lloyd & Ira Packer, *Jury Instructions in a Case With a Defense of Not Guilty by Reason of Insanity*, *The Journal of the American Academy of Psychiatry and the Law*, <http://jaapl.org/content/39/3/424>.

³ To clarify, this Note deals particularly with the insanity defense, and not with a diminished capacity defense. Although both relate to determining the mental competency of a defendant, the insanity defense is a full defense to a crime, whereas diminished capacity is a partial defense.

mistaking a defendant's legal status for a personal characteristic. Third, public school systems should require a high school general psychology education class in order to educate future generations on accurate definitions of mental illness. Fourth, courts should use mandatory jury instructions, along with experts, to increase juror awareness of the problems associated with the three definitions and to help mitigate the effect of mental illness stigma on the fact-finding process. This multifaceted approach would help to mitigate jury bias in legal insanity deliberations.

II. BACKGROUND

A. LAYPERSON DEFINITIONS OF MENTAL ILLNESS: THE ROLE OF MEDIA AND STIGMA

For laypeople who do not attend medical school or study psychology, a significant portion of their knowledge of mental illnesses comes from media, including news articles they read as well as the movies and shows they watch.⁴ Although laypeople can also receive knowledge from personal experiences, independent research, and other non-media sources, studies show that mass media sources serve as a primary source of public knowledge about mental illnesses such as bipolar disorder, schizophrenia, and depression.⁵ A psychology professor at the University of California, Berkeley, stated that most media portrayals of mental illness are simply wrong in that they are negative and stereotypical, labelling those with mental illnesses as “incompetent, dangerous, slovenly, and undeserving.”⁶ Such portrayals lead laypeople to form inaccurate views and “otherize” those with mental illnesses, essentially creating a social distance between “‘them’ and the rest of ‘us.’”⁷ “Othering” is the process through which dominant groups define the existence of secondary groups by using language that degrades the status of a secondary group's members.⁸

The othering process has resulted in the creation of a number of misconceptions of mental illness, thereby skewing the public's

⁴ Fawcett, *supra* note 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Stephen G. Sapp, *Social Problems and Social Change*, IOWA ST. U., <http://www.soc.iastate.edu/Sapp/soc235change.html> (last visited Mar. 31, 2017).

understanding. First, media often portrays mentally ill characters as criminal, violent, and dangerous.⁹ In actuality, studies show that those with mental illnesses are “less likely to commit violent crimes” and “more likely to be victimized.”¹⁰ Don Diefenbach, an academic researcher on “media portrayals of mental health issues” at the University of North Carolina, Asheville, found that mentally ill characters were “[ten] times more likely than other TV characters to commit a violent crime.”¹¹ Additionally, fictional mentally ill characters were “between [ten] to [twenty] times more likely to commit a violent crime” than their real-life counterparts.¹²

Second, media frequently stereotypes characters with mental illnesses by making them “look different than others.”¹³ For example, in television shows, comics, video games, and movies, those with mental illnesses are otherized and shown as threatening or evil through visual signifiers such as “disheveled hair” or “rumpled clothes.”¹⁴

Third, media depicts those with mental illnesses to appear childish.¹⁵ For example, in the television show *Monk*, the protagonist’s serious mental illness, Obsessive Compulsive Disorder (“OCD”), is trivialized to appear as a “mere quirk” that is silly or funny.¹⁶

Fourth, mental illnesses are portrayed in a black and white manner, lumping all conditions together as either severe and debilitating, or as mere quirks that are silly.¹⁷ Consequently, for laypeople, “mental illness” becomes a blanket term used as a catch-all phrase that captures all conditions, instead of using specific terms to describe separate disorders such as “schizophrenia” or “bipolar disorder.”¹⁸ This minimizes the complexity of each mental illness and further propagates misunderstandings.¹⁹ Even if specific disorders are properly labelled, all

⁹ Fawcett, *supra* note 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Fawcett, *supra* note 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See id.* (discussing the idea that using “mental illness” as a blanket term leads to the view that “one-title-fits-everybody”).

mentally ill people are depicted to be extremely similar, so that one media portrayal of someone with schizophrenia resembles another, despite the fact that mental illnesses are expressed differently in each person.²⁰

Fifth, media shows most psychiatric hospitals to be more harmful than helpful with dark corridors, bare walls, and out-of-control patients held against their will.²¹ Even though this may be accurate for some hospitals, it is a generalization that may have a negative effect of deterring people from seeking help.²²

Last, media misrepresentations usually imply that those with mental illnesses can never recover.²³ They are often shown as static characters, creating the impression that even with therapy, it is impossible to get better.²⁴ If they do get better, the extent to which they are generally shown to recover is mere stabilization, rather than full integration into society with jobs and a social circle.²⁵ Thus, the underlying message sent to the public is that there is no hope for a “normal” life for those with mental illness. However, in reality, many live healthy and fruitful lives with the help of doctors, “therapy, medications, and support networks.”²⁶ These various misconceptions cast out those with mental illnesses from society and incorporate media misportrayals of mental illness into the public’s understanding.²⁷

Although there have been some recent efforts to combat media depictions of mental illness, the overwhelming majority of misrepresentations are still very “outdated and harmful.”²⁸ In 2013, the Associated Press (“AP”) attempted to add an entry on mental illnesses into its Stylebook to assist journalists in more accurately representing mental illnesses.²⁹ More than half of the world’s population sees AP news on any

²⁰ *Id.*

²¹ Fawcett, *supra* note 1.

²² See *id.* (stating that “In reality, a great number of people elect to go to [psychiatric wards]”).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Margarita Tartakovsky, *Media’s Damaging Depictions of Mental Illness*, PsychCentral, <https://psychcentral.com/lib/medias-damaging-depictions-of-mental-illness/>.

²⁸ Fawcett, *supra* note 1.

²⁹ *Id.*

given day.³⁰ The AP Stylebook is an essential writing style guide for journalists, sometimes referred to as the “journalist’s bible.”³¹ The added mental illness entry is meant to answer questions pertaining to (1) when mental illness information is relevant to a story, (2) what sources credibly diagnose mental illnesses as, and (3) which words a journalist should use or avoid to describe a person’s mental illness.³² For example, the entry recommends that journalists not “describe an individual as mentally ill unless it is clearly pertinent to a story and the diagnosis is properly used.”³³ Additionally, the entry recommends specifying the disorder when possible because “mental illness is a general condition.”³⁴ Further, journalists should “not use derogatory terms, *such as insane, crazy/crazed, nuts or deranged,*” and avoid descriptions that “connote pity.”³⁵ It also recommends that journalists “not assume that mental illness is a factor in a violent crime, and verify statements to that effect” because “[s]tudies have shown that the vast majority of people with mental illnesses are not violent ... and most who are violent do not suffer from mental illness.”³⁶

Additionally, screenwriters have attempted to more fairly portray mentally ill characters as dynamic rather than static.³⁷ A prime example of such a dynamic character is Carrie Mathison, a CIA operative who lives with bipolar disorder in the television show “Homeland.”³⁸ Although Carrie’s character may be more functioning than those really living with bipolar disorder, it is nevertheless a refreshingly accurate media portrayal of a person living with bipolar disorder.³⁹ Instead of being portrayed as a socially deviant person with no skills and no hope for recovery, Carrie is consistently shown as a fearless, high-level CIA operative, always going to

³⁰ Associated Press, About, <https://www.ap.org/about/>.

³¹ *What Is the Associated Press Stylebook* (2016), AP, https://www.apstylebook.com/?do=what_is.

³² *Entry on Mental Illness Is Added to AP Stylebook*, AP, (March 7, 2013), <http://www.ap.org/content/press-release/2013/entry-on-mental-illness-is-added-to-ap-stylebook>.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ See, e.g., Jeffrey Lieberman, *Homeland: A True Portrayal of Mental Illness* (Nov. 20, 2014), <https://www.psychologytoday.com/blog/shrink-speak/201411/homeland-true-portrayal-mental-illness> (discussing one such attempt in the television show *Homeland*).

³⁸ *Id.*

³⁹ *Id.*

great lengths to be the best in her field.⁴⁰

In addition, comedian John Oliver uses his talk show “Last Week Tonight with John Oliver” to raise awareness on current issues, such as misconceptions of mental illnesses.⁴¹ During one of his episodes in October 2015, he dedicated a significant portion of time to dispelling myths about mental illness through comedy.⁴² He stated that even TV personalities that are supposedly medical professionals, such as Dr. Oz, misuse labels such as “insane.”⁴³ Oliver responded to Dr. Oz’s comment towards a guest, “have you gone completely insane... [so that you] go outside to suck on a rock and bark at the moon,” by stating that those behaviors are clearly not behaviors of the mentally ill.⁴⁴ Oliver also raised the issue of how little mental illness is discussed in the media, and that it is only mainly discussed during the aftermath of major mass gun shootings.⁴⁵ He explained that this is a means of steering the conversation from the need for gun control to wrongly blaming the mentally ill.⁴⁶ To illustrate this point, Oliver showed news clips, during which Donald Trump stated that “[a mass shooting is not] really about guns, [but] is really about mental illness,” and Ben Carson stated that “in many of these shootings we have people who have mental disturbances.”⁴⁷ Oliver dispels the misconception that Carson and Trump propagate by stating that the “aftermath of a mass shooting might be the worst time to talk about mental health” and that it is “deeply misleading” because the “vast majority of mentally ill people are nonviolent, the vast majority of gun violence is committed by nonmentally ill people...and mentally ill people are far more likely to be victims of violence rather than perpetrators.”⁴⁸ Despite the success of *Homeland* and the reach of John Oliver’s talk show, more instances of realistic media portrayals of mental illnesses are still needed in order to tear down the stigmas of mental illnesses

⁴⁰ *Id.*

⁴¹ Last Week Tonight, *Last Week Tonight with John Oliver: Mental Health (HBO)*, YOUTUBE (Oct. 4, 2015), <https://www.youtube.com/watch?v=NGY6DqB1HX8>; <http://www.techinsider.io/john-oliver-last-week-tonight-mental-illness-2015-10>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

ingrained in the minds of laypeople.⁴⁹

i. Stigmatization and Its Effects

“Stigma” can be defined as a preconceived notion that serves as a negative “social mark” and discredits members of a particular group, such as those with mental illnesses.⁵⁰ Media perpetuates stigma by labelling those with mental illnesses as dangerous, socially deviant, and unable to live “normally.”⁵¹ When the public internalizes these negative labels, a lasting stigma is created that negatively affects their interactions with those with mental illnesses.⁵² This stigma also negatively affects what the mentally ill think of themselves.⁵³ This discriminatory labelling thus creates a self-fulfilling prophecy for those with mental illnesses which “reduce[s] self-esteem and healthcare utilization.”⁵⁴ For instance, the way others perceive, treat, and talk to those with mental illnesses through labels alters the way those with mental illnesses think of themselves, thus locking them into a cyclical pattern of behavior that is detrimental to recovery and integration into society.⁵⁵ The labelling essentially propels those with mental illnesses to adopt an idea of themselves that reflects a “stereotyped image of insanity,” which has the effect of “limiting self-control.”⁵⁶ This damaged self-understanding perpetuates deviant behavior and prevents them from recovering, producing a self-fulfilling prophecy.⁵⁷ As such, the stigma of such labels discredits the mentally ill and excludes them from opportunities and social activities, narrowing their life chances to the levels

⁴⁹ *Id.*

⁵⁰ See Guy A. Boysen & David L. Vogel, Education and Mental Health Stigma: The Effects of Attribution, Biased Assimilation, And Attitude Polarization, 27 J. SOC. AND CLINICAL PSYCHOL. 447 (2008).

⁵¹ Aaron Levin, Media Cling to Stigmatizing Portrayals of Mental Illness, PSYCHIATRIC NEWS, http://psychnews.psychiatryonline.org/doi/10.1176/pn.46.24.psychnews_46_24_16-a.

⁵² Corrigan et al., *Understanding the Impact of Stigma on People With Mental Illness*, 1 WORLD PSYCHIATRY 1, 16–20 (2002), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1489832/>.

⁵³ *Id.* at 447.

⁵⁴ *Id.*

⁵⁵ *Id.* at 447–49.

⁵⁶ *Id.*

⁵⁷ Teresa Cannistraro, A Call for Minds: The Unknown Extent of Societal Influence on the Legal Rights of Involuntarily and Voluntarily Committed Mental Health Patients, 19 ANNALS HEALTH L. 425, 430 (2010).

preconceived by the stigma itself.⁵⁸ These missed opportunities and social activities include access to “good jobs, safe housing, satisfactory health care, and affiliations with a diverse group of people.”⁵⁹

The magnitude of violence among people with mental illnesses is “greatly exaggerated in the minds of the general population.”⁶⁰ In fact, “the vast majority of violent people do not suffer from mental illnesses,” and “the contribution of people with mental illnesses to overall violence rates is very small.”⁶¹ Those with mental illnesses are much “more likely to be victims” of a crime rather than the victimizers.⁶² Also, every year, four percent of the adult American population experiences a serious mental illness that substantially interferes with major life activities, which equates to approximately one in twenty-five adults.⁶³ Yet the seriously mentally ill commit only four percent of all homicides indicating that mentally ill individuals are less likely than the average person to commit homicides.⁶⁴ Even so, the few people with mental illnesses who do become violent and commit crimes catch the media’s attention.⁶⁵ Coverage of rare but sensational events such as the Virginia Tech Massacre or the Batman Movie Theater Shootings, even if such events are extremely newsworthy on their own, are usually paired with immediate accusatory discussions of mental illness, diverting the discussion from gun control to mental illness.⁶⁶ In

⁵⁸ *Id.* at 430-31.

⁵⁹ Corrigan et al., *Understanding the Impact of Stigma on People With Mental Illness*, 1 WORLD PSYCHIATRY 1, 16–20 (2002), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1489832/>.

⁶⁰ Mental Health Reporting, *Facts About Mental Illness and Violence*, U. OF WASH. (2016), http://depts.washington.edu/mhreport/facts_violence.php.

⁶¹ *Id.*

⁶² *Id.* See National Alliance on Mental Illness, *Mental Health By The Numbers*, NAMI, <https://www.nami.org/Learn-More/Mental-Health-By-the-Numbers> (last visited May 20, 2017) (stating that every year, 18.5% of the adult American population experiences mental illness, which equates to approximately one in five. Also, every year, 4.0% of the adult American population “experiences a serious mental illness. . . that substantially interferes with or limits one or more major life activities,” which equates to approximately one in twenty-five.)

⁶³ *Id.*

⁶⁴ The Sentencing Project, *Mentally Ill Offenders in the Criminal Justice System: An Analysis and Prescription*, SENTENCING PROJECT (Jan. 2002), http://www.sentencingproject.org/doc/publications/sl_mentallyilloffenders.pdf.

⁶⁵ See, e.g., Jonathan M. Metzl, *Mental Illness, Mass Shootings, and the Politics of American Firearms*, 105 AM. J. PUB. HEALTH 2, 240–49 (2015), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4318286/> (discussing the assumption that mental illnesses cause gun violence).

⁶⁶ See Adam Gopnik, *One More Massacre*, NEW YORKER (Jul. 20, 2012),

reality, a 2001 study of “thirty-four adolescent mass murders, all male” showed that only twenty-three percent “had a documented psychiatric history of any kind” whereas forty-eight percent “had preoccupations with weapons.”⁶⁷ The extended media coverage thus feeds into the stereotype of the mentally ill as dangerous.⁶⁸ Consequently, public opinion is again skewed because media attention makes it seem as though more crimes occur by the mentally ill, and so this must mean that they are generally all violent.⁶⁹ This process further reinforces the stigmas created by media in the first place.⁷⁰

In addition, legal statuses related to mental illness, such as “legally insane” or “mentally incompetent”, have many negative connotations for laypeople.⁷¹ The process of semantic change, which is the evolution of word usage,⁷² may be informed by media misconceptions and popular taboos from a specific time period. For example, the word “faggot,” was originally defined in the thirteenth century as a “bundle of twigs bound up.”⁷³ Over time, however, the word evolved to become a pejorative used against a particular class of people, male homosexuals.⁷⁴ Through its use as an insult against a particular group, it has now come to be used as a general derogatory comment, so that young people use the word “fag” to denigrate LGBT individuals in general, as well as to mean “uncool” or

<http://www.newyorker.com/news/news-desk/one-more-massacre>.

⁶⁷ Lois Beckett, *What We Actually Know About the Connections Between Mental Illness, Mass Shootings, and Gun Violence*, PACIFIC STANDARD (Jun. 10, 2014), <http://www.psmag.com/health-and-behavior/actually-know-connections-mental-illness-mass-shootings-gun-violence-83103>.

⁶⁸ Cannistraro, *supra* note 57 at 430.

⁶⁹ *Id.* See generally Kate Murphy, *The Problem With Blaming Mass Shootings On Mental Illness*, THE FEDERALIST (Oct. 19, 2015), <http://thefederalist.com/2015/10/19/the-problem-with-blaming-mass-shootings-on-mental-illness/> (discussing that most people suffering from mental illness have no more propensity to violence than the average person and are therefore not generally violent).

⁷⁰ *Id.*

⁷¹ See Andreas Blank, *Why Do New Meanings Occur? A Cognitive Typology of the Motivations for Lexical Semantic Change*, COGNITIVE LINGUISTIC RESEARCH 61–90 (René Dirven, Ronald W. Langaker, John R. Taylor eds., 1999) (discussing generally the changing connotations of words over time).

⁷² *Id.*

⁷³ ONLINE ETYMOLOGY DICTIONARY, *Faggot* (2017), <http://www.etymonline.com/index.php?term=faggot>.

⁷⁴ *Id.*

another generally negative insult.⁷⁵ Similarly, the word “insane,” although used in the legal context to assess one’s mental illness, is used by the general public to mean that something is “absurd,” “extreme,” or that one is out of his or her mind.⁷⁶ Additionally, words associated with “insane” such as “sick,” “crazy,” and “psycho” are all derogatory terms to mean that someone is out of his or her mind.⁷⁷ Recently, there has been another semantic change, so that American youth use “insane” and related words to mean that something is so extreme that it becomes “cool.”⁷⁸

In general, negative usages of the word “insane” have become negatively associated with the word itself, so that in the courtroom, the mere utterance of the words “legally insane” primes a web of other negative words and thoughts in jurors’ minds.⁷⁹ Psychology defines this process as the web of association related to retrieval cues.⁸⁰ When two words are heard together frequently, an “‘associative’ link is formed between them in the mind of the hearer, and the more frequently they occur together, the stronger the ‘association.’”⁸¹ This process adds to jury bias, as such an implicit bias may lead jurors to wrongly believe that a defendant’s legal status is also a negative personal characteristic associated with the negative connotations of the word “insane.”⁸²

ii. The Impact of Mental Illness Stigma on Seeking Mental Healthcare

One effect of stigmatizing individuals with mental illnesses is the

⁷⁵ See Susan Donaldson James, “*That’s So Gay*”: *Words that Can Kill*, ABC NEWS (Apr. 13, 2009), <http://abcnews.go.com/m/story?id=7328091&sid=26>.

⁷⁶ MERRIAM-WEBSTER, *Insane* (2017), <http://www.merriam-webster.com/dictionary/insane>.

⁷⁷ Brian Flapping, *Crazy Talk: The Language of Mental Illness Stigma*, THE GUARDIAN, <https://www.theguardian.com/science/brain-flapping/2012/sep/06/crazy-talk-language-mental-illness-stigma>.

⁷⁸ See URBAN DICTIONARY, *Insane* (2017), <http://www.urbandictionary.com/define.php?term=Insane>.

⁷⁹ See Herbert H. Clark, *Word Associations and Linguistic Theory*, in NEW HORIZONS IN LINGUISTICS, (John Lyons ed.) http://web.stanford.edu/~clark/1970s/Clark,%20H.H.%20_Word%20associations%20and%20linguistic%20theory_%201970.pdf (discussing the concept of word associations and webs generally).

⁸⁰ *Id.*

⁸¹ *Id.* at 271.

⁸² See Trisha Renaud, *When Jurors Can’t Be Impartial*, DAILY REPORT, (Dec. 10, 2013), <http://www.dailyreportonline.com/id=1202631521288/When-Jurors-Cant-be-Impartial?slreturn=20170516115844>.

creation of a barrier for those who wish to seek medical help.⁸³ Despite the availability of interventions, only 59.6 percent of people with mental illnesses sought treatment in 2011.⁸⁴ Consequently, if someone has a mental illness and his or her social network continually stigmatizes and puts down those with mental illnesses, he or she will be less likely to pursue proper treatment and care.⁸⁵ This is due to a “fear of being associated with negative stereotypes” and a desire to avoid public stigma.⁸⁶ Without proper medical care, some people with particular types of mental illnesses are more prone to moments of unreality, in which they may commit crimes without even realizing it.⁸⁷

B. MEDICAL DEFINITIONS OF MENTAL ILLNESS

There is discord between legal insanity and mental illness as a medical term.⁸⁸ The term “insanity” is not used in the medical world, but is often used in the legal world to show that a person accused of a crime is not guilty of the crime because of the effects of his or her mental illness.⁸⁹ However, in medicine and psychology, the term “mental illness” is used broadly to cover a wide range of syndromes, such as those in the schizophrenia spectrum, anxiety and affective disorders, eating disorders, and personality disorders.⁹⁰ These medical definitions frequently do not align with legal definitions of insanity for criminal defense purposes.⁹¹

⁸³ Patrick W. Corrigan et al., *The Impact of Mental Illness Stigma on Seeking and Participating in Mental Health Care*, ASS’N FOR PSYCHOL. SCI. (Aug. 1, 2014), <http://www.psychologicalscience.org/index.php/publications/mental-illness-stigma.html>.

⁸⁴ *Id.*

⁸⁵ *Stigma As A Barrier To Mental Health Care*, ASS’N FOR PSYCHOL. SCI. (Sept. 4, 2014), <http://www.psychologicalscience.org/index.php/news/releases/stigma-as-a-barrier-to-mental-health-care.html>.

⁸⁶ *Id.*

⁸⁷ The Sentencing Project, *supra* note 64 at 7 (“[p]eople with mental illness are more likely to exhibit the kinds of behaviors that will bring them into conflict with the criminal justice system... prisoners with mental illnesses were twice as likely as other inmates to have been homeless prior to their arrest; forty percent were unemployed; and nearly half said they were binge drinkers.”).

⁸⁸ Ryan Howes, *The Definition of Insanity is . . . Perseverance v. Preservation*, PSYCHOL. TODAY (Jul. 27, 2009), <https://www.psychologytoday.com/blog/in-therapy/200907/the-definition-insanity-is>.

⁸⁹ Plus, *supra* note 1; Legal Information Institute, *supra* note 1.

⁹⁰ Plus, *supra* note 1.

⁹¹ Howes, *supra* note 88.

For mental health professionals such as “psychiatrists, psychologists, psychiatric social workers, and mental health ‘counselors,’” mental illness has become a “broadly conceived elastic concept.”⁹² The Centers for Disease Control and Protection (CDC) define mental illness as “disorders generally characterized by dysregulation of mood, thought, and/or behavior.”⁹³ The American Psychiatric Association (“APA”), in their Diagnostic and Statistical Manual, Fifth Edition (“DSM-V”), is the manual most widely used by clinicians to formally diagnose their patients.⁹⁴ It defines mental illness as follows:

*A mental disorder is a syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning. Mental disorders are usually associated with significant distress or disability in social, occupational, or other important activities. An expectable or culturally approved response to a common stressor or loss, such as the death of a loved one, is not a mental disorder. Socially deviant behavior (e.g., political, religious, or sexual) and conflicts that are primarily between the individual and society are not mental disorders unless the deviance or conflict results from a dysfunction in the individual, as described above.*⁹⁵

Additionally, dysfunctions arising from mental illness usually impact four fundamental areas: affect, perception and cognition, motivation and behavior, and interpersonal functioning.⁹⁶ Affect includes distress and depression, whereas problems in perception and cognition include

⁹² Bruce J. Winick, *Ambiguities in the Legal Meaning and Significance of Mental Illness*, 1 PSYCHOL., PUB. POL'Y, & L. 534, 554–55 (1995).

⁹³ *Mental Illness*, CTNS. FOR DISEASE CONTROL AND PREVENTION (Aug. 11, 2016), <http://www.cdc.gov/mentalhealth/basics/mental-illness.htm>.

⁹⁴ *From Planning to Publication: Developing DSM-5*, AM. PSYCHIATRIC ASS'N (2013), <http://www.dsm5.org/about/pages/faq.aspx>.

⁹⁵ DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, 20 Am. Psychiatric Ass'n 5th ed. (2013).

⁹⁶ *Id.*

hallucinations and delusions.⁹⁷ Motivation and behavior includes lethargy as well as manic and risky behaviors. Interpersonal and social functioning includes problems with basic communication, assertiveness, and necessary problem-solving skills.⁹⁸

In addition, even within the medical world, definitions of mental illnesses and categories are not entirely permanent or well delineated.⁹⁹ DSM-V is the primary manual used by clinicians in the United States, but with each new edition, symptoms, terminologies, and treatments are changed.¹⁰⁰ For example, the most recent DSM-V replaced Asperger's Disorder from the earlier DSM-IV-TR with Autism Spectrum Disorder.¹⁰¹ Thus, even medical definitions of mental illnesses are elastic and change over time.¹⁰²

C. LEGAL DEFINITIONS OF MENTAL ILLNESS: THE LEGAL INSANITY DEFENSE

Legal insanity is often used in the American justice system to show that criminal defendants should not be found guilty by reason of insanity.¹⁰³ Criminal defense attorneys argue that criminal defendants lacked the necessary intent required for criminal acts either because they did not realize

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See *Highlights of Changes from DSM-IV-TR to DSM-5*, AMERICAN PSYCHIATRIC ASSOCIATION, <http://dsm.psychiatryonline.org/doi/abs/10.1176/appi.books.9780890425596.changes>.

¹⁰⁰ See generally American Psychiatric Association, *supra* note 99, which discusses The National Institute for Mental Health and its new project, Research Domain Criteria ("RDoC"), to replace the DSM-V because of its problem with changing criteria and thus its reliability. RDoC is also said to bridge the gap between American mental illness diagnoses and those of other countries who do not use the DSM and its terms for diagnoses.

¹⁰¹ American Psychiatric Association, *supra* note 99; see generally Heather Rudow, *NIMH Announces Project to Replace DSM*, COUNSELING TODAY (May 6, 2013), <http://ct.counseling.org/2013/05/nimh-announces-project-to-replace-the-dsm/>; James Phillips & James Phillips, *DSM-5 and the NIMH Research Domain Criteria Project*, PSYCHIATRIC TIMES (Apr. 13, 2011), <http://www.psychiatristimes.com/dsm-5-0/dsm-5-and-nimh-research-domain-criteria-project>.

¹⁰² John Grohol, *DSM-5 Released: The Big Changes*, <https://psychcentral.com/blog/archives/2013/05/18/dsm-5-released-the-big-changes/> (discussing changes from one DSM to the next including the replacement of Asperger's disorder with autism).

¹⁰³ *United States Insanity Defense*, U.S. LEGAL L. DIG., <http://lawdigest.uslegal.com/criminal-laws/insanity-defense/7204> (last visited May 20, 2017).

the acts were wrong or because even if they did realize it, they could not control their actions.¹⁰⁴ It is difficult to determine the exact circumstances in which the defense can be used because legal insanity is not defined with absolute precision, but rather in general and circular terms.¹⁰⁵ The vagueness of such legal terms masks “arbitrariness and discrimination in the application of the law” and creates legal problems, such as the deprivation of liberty.¹⁰⁶ Even so, the question of insanity is a question of fact, left for the jury to decide.¹⁰⁷ The insanity defense is outlined below in both federal law and state law.

i. State Law

State approaches to the insanity defense vary, but most states have adopted some variation of the M’Naghten Rule, or the Model Penal Code Rule.¹⁰⁸ Four states in outrage abolished the use of the insanity defense altogether when John Hinckley was acquitted of President Ronald Reagan’s assassination by reason of insanity in 1982.¹⁰⁹ The M’Naghten Rule is the standard for insanity in many of states.¹¹⁰ After hearing medical and expert testimony, the jury applies the standard.¹¹¹ Under the M’Naghten Rule, there is a presumption in favor of sanity, unless the defense proves that “at the time of committing the act the defendant was laboring under such defect of reason from disease of the mind as (1) not to know the nature and quality of the act he was doing or (2) if he did know it, that he did not know what he was doing was wrong.”¹¹²

A number of states apply variations of the M’Naghten Rule such as the “Irresistible Impulse test.”¹¹³ Some states treat the Irresistible Impulse test as a separate rule, while others treat it as a variation of the M’Naghten Rule,

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Winick, *supra* note 9292.

¹⁰⁷ *United States Insanity Defense*, *supra* note 103.

¹⁰⁸ *Id.*; Michelle Migdal Gee, *Modern Status of Test of Criminal Responsibility – State Cases*, 9 A.L.R. 4TH 526 (1981).

¹⁰⁹ *United States Insanity Defense*, *supra* note 103.

¹¹⁰ *See* Gee, *supra* note 108.

¹¹¹ *Insanity Defense*, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/insanity_defense.

¹¹² *Id.*

¹¹³ *Id.*

and apply the tests in conjunction with each other.¹¹⁴ The Irresistible Impulse test finds that a defendant loses the “power [to] choose between right and wrong” when the “alleged crime was so connected with [his or her] mental disease, in the relation of cause and effect, as to have been the product of it solely.”¹¹⁵ This modified version of the M’Naghten rule shifts the analysis from a defendant distinguishing right from wrong to whether there was a mental illness.¹¹⁶

Additionally, the Model Penal Code Rule is adopted by eighteen states.¹¹⁷ It is a modified version of the previous tests.¹¹⁸ The rule states that a defendant is not responsible for criminal conduct if the defendant does not have “substantial capacity either to appreciate the criminality . . . of his conduct, or to conform his conduct to the requirements of the law” as a result of a mental disease.¹¹⁹ Since the standard is vague, the jury has a lot of discretion in deciding on factors relevant to the defense.¹²⁰

Currently, a majority of states require the defense to prove that the defendant is insane by clear and convincing evidence, or by a preponderance of the evidence.¹²¹ Before 1982, the state had to prove that the defendant was not insane, but this quickly changed after the outrage following the Hinckley verdict.¹²² The states that still follow this application require the prosecutor to prove the defendant’s sanity beyond a reasonable doubt.¹²³ Additionally, many states now require a defendant who is found not guilty by reason of insanity to stay in a mental institution for a certain amount of time after acquittal for evaluation.¹²⁴

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *United States Insanity Defense*, *supra* note 103.

¹¹⁷ *The ‘Model Penal Code’ Test for Legal Insanity*, FINDLAW <http://criminal.findlaw.com/criminal-procedure/the-model-penal-code-test-for-legal-insanity.html>.

¹¹⁸ *Gee*, *supra* note 108.

¹¹⁹ *Id.*

¹²⁰ *See United States Insanity Defense*, *supra* note 103.

¹²¹ *Gee*, *supra* note 108.

¹²² *United States Insanity Defense*, *supra* note 103.

¹²³ *Gee*, *supra* note 108.

¹²⁴ *United States Insanity Defense*, *supra* note 103.

ii. Federal Law

The Federal Insanity Defense Reform Act of 1984, 18 U.S.C. § 17, returns to the “‘knowing right from wrong’” standard, thus eliminating the irresistible impulse test under federal law.¹²⁵ Federal law allows mental disease to be used as an affirmative defense when the defense proves by clear and convincing evidence that, at the time of the crime, due to an illness, the defendant was “unable to appreciate the nature and quality or the wrongfulness of his [or her] acts.”¹²⁶ Additionally, the Reform Act of 1984, 18 U.S.C. § 4241, refers to sentencing provisions for offenders with mental diseases.¹²⁷

iii. Sample Jury Instructions

Rule 2.1050 of the 2017 California Rules of the Court states that the Judicial Council’s jury instructions “are the official instructions for use in California.”¹²⁸ These instructions aim to accurately state the law in a way that is easy to understand.¹²⁹ The Judicial Council acts “as the policymaking body of the California courts” and has adopted the California Civil Jury Instructions (CACI) and the California Criminal Jury Instructions (CALCRIM) for civil and criminal courts respectively.¹³⁰ Under California Rules of the Court, Rule 2.1050(e), the “[u]se of Judicial Council instructions is strongly encouraged.”¹³¹ If the Judicial Council set of instructions “contain an instruction applicable to a case,” “it is recommended that the judge use the Judicial Council instruction unless he

¹²⁵ Legal Information Institute, *supra* note 1.

¹²⁶ *Id.* (quoting 18 U.S.C. § 17).

¹²⁷ *Id.*

¹²⁸ CALCRIM No. 3450 (2016), *Insanity and Civil Commitments, Insanity: Determination, Effect of Verdict*, http://www.courts.ca.gov/partners/documents/calcrim_2016_edition.pdf (last visited May 20, 2017).

¹²⁹ *Id.*

¹³⁰ See Judicial Council, CALIFORNIA COURTS: THE JUDICIAL BRANCH OF CALIFORNIA, <http://www.courts.ca.gov/policyadmin-jc.htm>, *Jury Instructions for Judges and Attorneys*, CALIFORNIA COURTS: THE JUDICIAL BRANCH OF CALIFORNIA, <http://www.courts.ca.gov/partners/juryinstructions.htm>.

¹³¹ 2017 California Rules of Court Rule 2.1050(e), CALIFORNIA COURTS: THE JUDICIAL BRANCH OF CALIFORNIA, http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_1050 (last visited May 20, 2017).

or she finds that a different instruction would more accurately state the law and be understood by jurors.”¹³² If the CALCRIM instructions do not contain instructions applicable to a case, then it is recommended to give instruction that is “accurate, brief, understandable, impartial, and free from argument.”¹³³ CALCRIM, which was officially adopted in 2005, states the following jury instructions for legal insanity:

You have found the defendant guilty of (insert crime). Now you must decide whether (he/she) was legally insane when (he/she) committed the crime[s]. The defendant must prove that it is more likely than not that (he/she) was legally insane when (he/she) committed the crime[s]. The defendant was legally insane if:

When (he/she) committed the crime[s], (he/she) had a mental disease or defect; AND

Because of that disease or defect, (he/she) was incapable of knowing or understanding the nature and quality of (his/her) act or was incapable of knowing or understanding that (his/her) act was morally or legally wrong.

Do not base a finding of not guilty by reason of insanity solely on the basis of a personality disorder, adjustment disorder, seizure disorder, or an abnormality of personality or character made apparent only by a series of criminal or antisocial acts. [Special rules apply to an insanity defense involving drugs or alcohol. Addiction to or abuse of drugs or intoxicants, by itself, does not qualify as legal insanity. This is true even if the intoxicants cause organic brain damage or a settled mental disease or defect that lasts after the immediate effects of the intoxicants have worn off. Likewise, a temporary mental condition caused by the recent use of drugs or intoxicants is not legal insanity.]

¹³² *Id.*

¹³³ *Id.*

[If the defendant suffered from a settled mental disease or defect caused by the long-term use of drugs or intoxicants, that settled mental disease or defect combined with another mental disease or defect may qualify as legal insanity. A settled mental disease or defect is one that remains after the effect of the drugs or intoxicants has worn off.] You may consider any evidence that the defendant had a mental disease or defect before the commission of the crime[s]. If you are satisfied that (he/she) had a mental disease or defect before (he/she) committed the crime[s], you may conclude that (he/she) suffered from that same condition when (he/she) committed the crime[s]. You must still decide whether that mental disease or defect constitutes legal insanity. [If you find the defendant was legally insane at the time of (his/her) crime[s], (he/she) will not be released from custody until a court finds (he/she) qualifies for release under California law. Until that time (he/she) will remain in a mental hospital or outpatient treatment program, if appropriate. (He/She) may not, generally, be kept in a mental hospital or outpatient program longer than the maximum sentence available for (his/her) crime[s]. If the state requests additional confinement beyond the maximum sentence, the defendant will be entitled to a new sanity trial before a new jury. Your job is only to decide whether the defendant was legally sane or insane at the time of the crime[s]. You must not speculate as to whether (he/she) is currently sane or may be found sane in the future. You must not let any consideration about where the defendant may be confined, or for how long, affect your decision in any way.] [You may find that at times the defendant was legally sane and at other times was legally insane. You must determine whether (he/she) was legally insane when (he/she) committed the crime.] [If you conclude that the defendant was legally sane at the time (he/she) committed the crime[s], then it is no defense that (he/she) committed the crime[s] as a result of an

*uncontrollable or irresistible impulse.] If, after considering all the evidence, all twelve of you conclude the defendant has proved that it is more likely than not that (he/she) was legally insane when (he/she) committed the crime[s], you must return a verdict of not guilty by reason of insanity.*¹³⁴

The CALCRIM jury instructions on legal insanity are quite long, yet do not include discussion on the problem of jury bias from the stigma associated with mental illnesses or the discrepancies between legal, medical, and general understandings of mental illness.¹³⁵

III. THE CENTRAL PROBLEM: DISCREPANCIES BETWEEN THE THREE COEXISTING UNDERSTANDINGS OF MENTAL ILLNESS RESULTING IN JURY BIAS

The law is a social institution, which makes the infiltration of societal biases against mental illness possible in the minds of lawyers, experts, judges, and juries.¹³⁶ It is unclear the extent to which stigma of mental illness influences legal decisions, but the legal system is comprised of human beings who are by no means immune to social pressures and popular media influences.¹³⁷

The central problem between having three coexisting definitions of mental illness is that jurors are generally laypeople and biased in their decision-making.¹³⁸ The legal system is devised to assume that jurors are “blank slates” who are impartial and able to objectively listen to facts, then objectively apply the law through judge’s instructions to those facts, and

¹³⁴ CALCRIM No. 3450 (2016), *Insanity and Civil Commitments, Insanity: Determination, Effect of Verdict*, http://www.courts.ca.gov/partners/documents/calcrim_2016_edition.pdf (last visited May 20, 2017).

¹³⁵ *Id.*

¹³⁶ Cannistrano, *supra* note 57 at 431.

¹³⁷ See Judith Minster & Ann Knowes, *Exclusion or Concern: Lawyers' and Community Members' Perceptions of Legal Coercion, Dangerousness and Mental Illness*, 13 PSYCHIATRY, PSYCHOL. & L., 172 (2006); Sumer Noel Ledet, *Differential Perceptions of Mental Illness: An Investigation of Stigma, Attitudes, And Help-Seeking Among Professionals, Consumers, And College Students*, U. OF TULSA, v. (2009).

¹³⁸ See Jennifer L. Skeem & Stephen L. Golding, *Describing Jurors' Personal Conceptions of Insanity and Their Relationship to Case Judgments*, 7 PSYCH., PUB. POL'Y, AND L. 561 (2001).

finally reach a just verdict.¹³⁹ However, jurors in fact bring in their misconceptions of mental illness to the jury room during deliberations.¹⁴⁰ Research has shown that laypeople have “knowledge structures”: collections of facts on a particular topic that are based on their own experiences.¹⁴¹ Hence, jurors’ “knowledge structures” influence their case judgments.¹⁴² Additionally, studies show that individuals process information in a biased manner.¹⁴³ Jurors see and process new information as either supportive of one’s preexisting attitudes or not.¹⁴⁴ Therefore, even if medical expert witnesses discuss medical definitions of mental illnesses, and the judge instructs the jury on “legal insanity,” misconceptions about those with mental illnesses that are ingrained in the minds of the jury seep into their decision-making process.¹⁴⁵ Thus, jurors may not truly be impartial in their decision-making processes.¹⁴⁶

In addition, jury instructions on the meaning of “legal insanity” may actually result in an unjust decision if the jury are told what to do and what not to think about when deliberating.¹⁴⁷ This is because attempts to avoid and suppress something may “actually increase the accessibility of the information” in one’s mind.¹⁴⁸ In particular, making an important decision such as deciding the guilt or innocence of an individual can cause “suppressed information” given in jury instructions to be more prominent in the mind of the juror, making it harder to ignore.¹⁴⁹ This phenomenon, the Ironic Process of Mental Control, causes jurors to unintentionally pay more attention to information that the judge instructed them to disregard

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 563.

¹⁴¹ *Id.* at 561.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Boysen & Vogel, *supra* note 50 at 451.

¹⁴⁵ See Skeem & Golding, *supra* note 138 at 561.

¹⁴⁶ *Id.*

¹⁴⁷ See Cassandra L. Wilson & Eric Laws, *The Effect of Judges’ Instructions About Case Information on Jury Memory*, J. OF UNDERGRADUATE SCHOLARSHIP, <http://blogs.longwood.edu/incite/2011/08/29/the-effect-of-judges%E2%80%99instructions-about-case-information-on-jury-memory/#sthash.bmGaYjLe.dpuf> (last visited May 20, 2017) (discussing the effect of jury instructions on jury memory generally).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

than if it was not specifically brought to their attention.¹⁵⁰

Additionally, legal insanity is a question of fact which is to be decided by the jury.¹⁵¹ The legal labels associated with mental illness, such as “insane” and “incompetent” have strong connotations and imply that the person’s legal status is a personal characteristic.¹⁵² This mismatch is detrimental to the mentally ill person, as the words may be deemed by the jury to be personal characteristics of the defendant, therefore resulting in unfair trial determinations.¹⁵³ In legal proceedings, the jury is meant to decide if the individual committed the crime in question, not whether the individual, in general, has a particular trait or propensity for certain behaviors.¹⁵⁴ Misinterpreting legal labels for personal traits of the individual increases the likelihood of the jury erroneously finding him or her guilty because of who he or she is, rather than basing guilt upon who committed the crime.¹⁵⁵ Additionally, under evidence law, jury deliberations are generally guarded from being examined, such that it may go unnoticed when the jury unfairly mistake legal statuses as personal traits.¹⁵⁶

In mock jury insanity defense studies, it has consistently been shown that jurors’ attitudes significantly affect their verdict choices in insanity defense trials.¹⁵⁷ These studies focus on how jurors construe information, such that jurors do consider instruction in their deliberations, but construe and interpret these instructions so that the instructions along with the

¹⁵⁰ *Id.*

¹⁵¹ Legal Information Institute, *supra* note 1.

¹⁵² See Sara Gordon, *Through the Eyes of Jurors: The Use of Schemas in the Application of “Plain-Language” Jury Instructions*, 64 HASTINGS L. J. 643 (Apr. 2013).

¹⁵³ See *Impartial Jury*, FINDLAW (2017), <http://constitution.findlaw.com/amendment6/annotation05.html>.

¹⁵⁴ *Id.*

¹⁵⁵ See, e.g., Jordan Steffen, *Insanity, Mental Illness Collide In Aurora Theater Shooting Trial*, DENVER POST (May 31, 2015), http://www.denverpost.com/theater-shooting-trial/ci_28222335/insanity-mental-illness-collide-aurora-theater-shooting-trial.

¹⁵⁶ FED. R. EVID. 606(b).

¹⁵⁷ See generally Norman J. Finkel & Sharon F. Handel, *How Jurors Construe “Insanity”*, 13 L. & HUM. BEHAV., 41–58 (1989); Richard P. McGlynn & Evan A. Dreilinger, *Mock Juror Judgment and the Insanity Plea: Effects of Incrimination and Sanity Information*, 11 J. OF APPLIED SOC. PSYCHOL. 166 (1981), (discussing the effect of incrimination information on insanity plea judgments when sanity is the only legal issue); Ronald L. Poulson, et al., *Mock Jurors’ Insanity Defense Verdict Selections: The Role of Evidence, Attitudes, and Verdict Options*, J. OF SOC. BEHAV. AND PERSONALITY (Jan. 1, 1997).

defendant's behavior fit in with the jurors' intuitive, common sense understandings of mental illness, rather than legal understanding of legal insanity.¹⁵⁸ In a specific mock juror study aimed at understanding how jurors construe information, as well as the factors and processes they use to reach their verdicts, the study found that jurors do not construe insanity cases in simplistic and indiscriminative ways.¹⁵⁹ Instead, the results showed that mock jurors' constructs of insanity are indeed discriminative, and more complex than any legal tests of insanity provide.¹⁶⁰ The study points to the fact that legal and lay views have not been harmonized as a major reason for the disparagement of certain verdicts.¹⁶¹ Consequently, the study shows that a legal insanity test fails to adequately capture the essence of mental illness as understood by layperson mock jurors, resulting in the mock jurors disregarding complicated instructions and instead reconstructing them to match their own layperson understandings.¹⁶²

Such actions on the part of the jury may constitute a violation of a defendant's due process rights.¹⁶³ The United States Constitution's Due Process Clause guarantees an individual's right to a fair trial.¹⁶⁴ If jurors are biased when deciding on the issue of legal insanity, then the individual on trial is no longer given a fair trial, and thus his or her due process rights are violated.¹⁶⁵

IV. PROPOSALS FOR CHANGE: A MULTI-INSTITUTIONAL APPROACH

A. INCREASED ACCURATE MEDIA PRESENCE

The negative effects resulting from tainted jury using coexisting definitions of mental illness during deliberations may be mitigated. First, juror misconceptions about mental illnesses can be dispelled through media presence that attempts to break down rather than build up stigmas and

¹⁵⁸ Finkel, *supra* note 157 at 57–58.

¹⁵⁹ *Id.* at 41.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 57.

¹⁶² *Id.*

¹⁶³ See U.S. CONST. amend. VI.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

stereotypes regarding mental illnesses.¹⁶⁶ Entertainment and media personnel should be encouraged to collaborate with mental health professionals before and during the making of media to accurately depict characters with mental illnesses and news about mentally ill individuals.

Even though some may see this approach as a violation of First Amendment rights, a loss of liberty, or overly-intrusive, minimization of discrimination for a particular group is a vital interest that must be protected. First Amendment laws and anti-discrimination laws coexist for so that a reasonable restriction on one's freedom of expression can be made if needed by the government under certain circumstances.¹⁶⁷ For constitutional purposes, people who are mentally ill have been deemed to be a class that faces discrimination and deserves governmental protection against prejudice.¹⁶⁸ Therefore, merely encouraging media personnel to accurately portray those with mental illnesses and at least attempt to dispel certain myths so as to combat discrimination are both interests that outweigh first amendment claims.

Since most Americans consume some form of media every day, it is one of the most far-reaching tools to reinforce a particular way of thinking for the public.¹⁶⁹ Encouraged collaboration between media personnel and mental health professionals along with the media's power to influence public opinion would greatly change layperson misconceptions about mental illnesses.¹⁷⁰ Therefore, media can not only be a form of entertainment, but also a tool to minimize stigma. After a significant amount of exposure to positive media portrayals of mental illnesses, jurors will be better equipped with more accurate medical knowledge of mental illnesses. In effect, the gap between two of the three coexisting definitions of mental illness—medical and layperson understandings—would merge together.

¹⁶⁶ See Ronnie Lovler, *How The Media Can Help Challenge Stereotypes and Change Perceptions*, IVOH (2015), <http://ivoh.org/how-the-media-can-help-challenge-stereotypes-and-change-perceptions/>.

¹⁶⁷ See generally Kathleen Ann Ruane, *Freedom of Speech and Press: Exceptions to the First Amendment*, CONGRESSIONAL RESEARCH SERVICE (Sep. 8, 2014), <https://fas.org/sgp/crs/misc/95-815.pdf>.

¹⁶⁸ *Id.*

¹⁶⁹ Jason Karaian, *We Now Spend More Than Eight Hours a Day Consuming Media*, QUARTZ (Jun. 1, 2015), <http://qz.com/416416/we-now-spend-more-than-eight-hours-a-day-consuming-media/>.

¹⁷⁰ Fawcett, *supra* note 1.

B. CREATION OF NEW LABELS FOR LEGAL STATUSES RELATED TO MENTAL ILLNESS

In addition to increased positive media presence, legislators should create new labels for legal statuses. These new labels would combat jury bias that arises from the negative connotations of the word “insane” which can cause a juror to mistake a defendant’s legal status for a negative personal characteristic. Legislators should replace legal labels with more neutral, more accurate, and less discriminatory words. One way to select more neutral words with less of a connection to other words is to use general Latin labels. If people do not attach meaning to the words, there is less of a chance for jurors to bring in stigmas and inadvertent word associations. For example, the term “legally insane” could be replaced with the Latin phrase *non compos mentis*, which translates to “not of sound mind” and is already used to connote legally insane in legal practice.¹⁷¹

Potential disadvantages of using Latin labels stem from inability to comprehend upon first glance, and that an inordinate amount of time, effort, and expense might be devoted to changing the statutes, codes, and jury instructions. However, as mentioned in Section II(A)(i), with frequent usage over time, the public might begin to correlate *non compos mentis* with a legal defense for people with mental illness. Also, reducing mental illness discrimination and potential due process violations clearly outweigh any administrative concerns. Therefore, the creation of legal terms with less inherent risk of recalling negative connotations would help decrease injustice in the jury deliberation process.

C. EDUCATIONAL INTERVENTIONS

Educational interventions attempt to dispel prejudices and replace misinformation with understanding.¹⁷² In particular, educational efforts directed at the causes of stigma and accurate understandings of mental illness is an effective method to change attitudes and reduce stigmatizing

¹⁷¹ *Non Compos Mentis*, MERRIAM WEBSTER, <http://www.merriam-webster.com/dictionary/non%20compos%20mentis> (last visited May 20, 2017).

¹⁷² Charles Herbert Stember, *Education and Attitude Change - The Effect of Schooling on Prejudice Against Minority Groups*, COMMENTARY MAGAZINE (Jan 1, 1962), <https://www.commentarymagazine.com/articles/education-and-attitude-change-the-effect-of-schooling-on-prejudice-against-minority-groups-by-charles-herbert-stember/> (discussing the effect of education on prejudice generally).

views.

i. Mandatory High School General Psychology Class

One way of educating laypeople would be a required high school general psychology class in public schools across the nation. This would be especially beneficial as it targets young people, whose ideas are malleable and may be easily influenced by both misinformation and accurate information.¹⁷³

A mandatory psychology curriculum, either through a semester-long course, or a one-time workshop may have general as well as specific positive outcomes. Generally, it may raise awareness in the youth population and thus combat mental illness stigma and perpetuate future generations' accurate understanding of mental illnesses. Specifically, it may prove to be a catalyst for those scared of receiving treatment for a mental illness because of stigma to actually receive treatment. Additionally, reaching out to adolescents would be worthwhile because they will be the future generation of jurors.

Such a course or workshop would have to be implemented either federally or by each individual state.¹⁷⁴ With President Obama's Every Student Succeeds Act passed in December 2015, the federal government has transferred a significant amount of its educational policy power to the states.¹⁷⁵ Therefore, nationwide mental health educational reforms must be achieved through state-specific changes. The implementation of a mandatory psychology class or workshop would have to be through an educational initiative similar to the Common Core that would appeal to state legislatures to ensure its adoption.¹⁷⁶ If mental illness myths are debunked

¹⁷³ See generally Brigid McKeon, *Effective Sex Education*, ADVOCATES FOR YOUTH (2006), <http://www.advocatesforyouth.org/component/content/article/450-effective-sex-education> (stating studies show that effective sex education in high schools has created positive outcomes such as "delaying the initiation of sex as well as reducing the frequency of unprotected sex, number of new partners, and the incidence of unprotected sex." It has also created long-term impacts such as a decrease in sexually transmitted diseases as well as a decrease in pregnancy rates).

¹⁷⁴ Lauren Camera, *Educations Shifts to the States*, U.S. NEWS AND WORLD REP. (Dec. 9, 2015), <http://www.usnews.com/news/the-report/articles/2015/12/09/new-federal-education-law-shifts-power-to-states>.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* For an example of a successful state specific educational initiative, see generally *Standards in Your State* COMMON CORE STATE STANDARDS INITIATIVE (2017),

from two different avenues, implicitly through the media, and explicitly through education, then youth will be more prone to accepting the information as truth and replacing their previous prejudice understandings of mental illness.

D. MANDATORY JURY INSTRUCTIONS

Media and classroom education approaches to combatting mental illness stereotypes and stigma may prove to be effective in the long-run. For immediate results, mandatory jury instructions should be given in the court room to help prevent injustice today and mitigate the effects of mental illness stigma on the fact-finding process. These instructions should be more than mere warnings of the problems associated with bringing misconceptions and stigmas into the deliberation process, since a decision-maker is more likely to think in terms of stereotypical categories. These jury instructions should instead give clear strategies and ideas on how to combat the problem of jury bias before deliberations.

As a starting point, the court itself, including judges and clerks, should be trained on the issues and problems resulting from the coexisting definitions of mental illness that are legally, medically, and media informed. If the court demonstrates that it is serious about addressing the problem of jury bias against the mentally ill, the jury will be more likely to follow its lead and comply by its rules.¹⁷⁷ The theory of group polarization posits that one will strengthen his or her opinion and form more of an extreme opinion when in group situations.¹⁷⁸ In this way, a groupthink mentality can propel the jury to take the instructions it receives and truly implement them into its

<http://www.corestandards.org/standards-in-your-state/>. (stating that a majority of states, forty-two out of fifty as well as the District of Columbia, have currently adopted the Common Core State Standards for classroom instruction); see, e.g., *State Policies on Sex Education in Schools*, NAT'L CONF. ST. LEGISLATURES (Feb. 6, 2016), <http://www.ncsl.org/research/health/state-policies-on-sex-education-in-schools.aspx>. (as of March 1, 2016 "[Twenty-four] states and the District of Columbia require public schools [to] teach sex education, thirty-three states and the District of Columbia require HIV/AIDS instruction, and nineteen states require that if sex education is provided, that it be medically accurate.").

¹⁷⁷ Cass R. Sunstein, *The Law of Group Polarization*, 2 JOHN M. OLIN L. AND ECON. 1, 1 (Dec. 7, 1999), http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1541&context=law_and_economics.

¹⁷⁸ *Id.*

decision making process.¹⁷⁹ Therefore, if judges are already primed on the problem of jury bias against the mentally ill and the need for a solution, then the jury will be more likely to engage in groupthink to follow the judge's instructions and combat the problem, rather than, on the contrary, to engage in groupthink to further propel jury bias through their own misconceptions.

One way of training judges would be to have required medical training for judges as a part of their mandatory continued legal education classes. As part of the training, a licensed medical professional would inform judges on the differences between legal insanity and medical mental illnesses. After being educated themselves, judges would then be better equipped to combat the problem of mental illness stigma in the courtroom.

Additionally, CALCRIM's jury instruction on legal insanity should be amended to include information regarding the problem of stigma, stereotypes, and bias in relation to deciding if a person is legally insane. The jury should be made aware of the three coexisting definitions and the problems resulting from the inconsistencies between the three. The instructions should also explain that jurors themselves may bring in their layperson, media-induced misconceptions, thereby being implicitly biased and tainting the legal decision-making process. These instructions should be amended to include information on the differences between legal insanity, medical mental illness, and layperson understandings of mental illness. If the Judicial Council is unwilling to amend the instructions, then as mentioned above in Section II(C)(iii), the judges themselves may create additional instructions that are accurate, brief, understandable, impartial, and free from judgment since CALCRIM does not contain an instruction on this subject. One example is to add the following to the CALCRIM legal insanity instructions:

Legal insanity is not necessarily the same as medical mental illness and may cover conditions not necessarily considered mental illnesses. Legal insanity is only found when the defendant had a severe mental disease or defect; and as a result, the defendant was unable to appreciate the nature and quality or the wrongfulness of his or her acts. On the other hand, a mental disorder, according to the

¹⁷⁹ See *Groupthink*, ORE. ST. U., <http://oregonstate.edu/instruct/theory/grpthink.html> (explaining that groupthink occurs when a group is extremely concerned with maintaining unanimity to the extent that they fail to evaluate all their options).

DSM, is a syndrome characterized by clinically significant disturbance in an individual's cognition, emotional regulation, or behavior that reflects a dysfunction in the psychological, biological, or development processes underlying mental functioning. Additionally, those who are not medical professionals usually subconsciously harbor misconceptions based on those who are mentally ill. One such misconception is that mentally ill persons are all violent. When coming to a decision, you must only use the prongs of legal insanity and you must consciously try to avoid using your preconceived notions of mental illnesses when making your decision.

In conjunction with jury instructions that inform the jury of potential bias against the mentally ill, there should be a medical professional who would give a clear strategy to mitigate the effects of the implicit bias. The professional should be well-versed in both the medical and legal worlds, perhaps someone with a dual degree, such as a J.D./M.D. with a concentration in psychiatry, or a J.D./Ph.D. in Clinical Psychology. This person's job should be to further educate the jury on the differences between legal insanity and medical definitions of mental illnesses, as part of the jury instructions. The medical professional should not be considered an expert witness hired by one side, but rather a neutral party present to ensure an impartial jury and a fair trial. This person could identify and debunk stereotypes about mental illnesses with accurate facts. This would be helpful because it would begin to tackle the problem head-on.

A potential problem associated with this addition would be the cost because the medical professional would have to be paid by the defendant, since he or she has the burden of proving the defense of insanity. This would pose great problems for indigent defendants. One solution would be for the cost to be absorbed by a nonprofit organization similar to *Medecins Sans Frontieres*, which is funded by public donations, and is composed of doctors who volunteer for good causes.¹⁸⁰ However, the medical professional should be required for every legal insanity case and should be integrated into the judicial process. As such, the cost should be absorbed by the system, and spread amongst society.

¹⁸⁰ See, e.g., *Medecines Sans Frontiers Home Page* (2016), http://www.msf.org_MEDECINS_SANS_FRONTIERES, <http://www.msf.orgq>.

V. CONCLUSION

There are three coexisting definitions of mental illness: medical, legal, and layperson understandings. The three do not completely overlap, so that gaps between them are filled with stereotypes, misunderstandings, and confusion for some people. In particular, the jury are a group of laypeople who decide whether an individual is legally insane for purposes of the legal insanity defense. A multifaceted approach must be taken to prevent laypeople from implicitly bringing in misconceptions in the jury deliberation process and creating injustice and a violation of a defendant's due process rights.

First, the media should portray mentally ill characters more accurately through guidance by a mental health professional. Second, legal status labels associated with mental illness should be renamed to words with no negative connotations, such as Latin words. Third, public schools across the country should be required to implement a mandatory psychology education class so as to educate the youth on accurate understandings of mental illness. Fourth, there should be mandatory jury instructions from a trained judge that explains the problem of mental illness stigma and coexisting definitions. The instructions should incorporate a presentation from a professional who is well versed in both legal and medical definitions of mental illness so as to break down misconceptions and assure more equality in the jury's decision-making process. These approaches together should tackle the problem from different angles: through media and entertainment, education for youth, and education for the jury in the courtroom itself. This multifaceted approach could begin to tackle the problem of media, stigma, and the law.