

## AAPL: Ask the Experts-2013

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Neil S. Kaye, MD, and Bob Sadoff, MD will answer questions from members related to practical issues in the real world of Forensic Psychiatry. Please send question to [nskaye@aol.com](mailto:nskaye@aol.com).

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Q. I am asked by a lawyer to evaluate a man for a NGRI or GBMI defense, but the charges are pretty minor. Any advice on how to proceed would be appreciated.

Sadoff:

It is important to stay within one's area of expertise. We are called upon to advise the attorney with respect to the mental state of his/her client. In criminal cases we evaluate the client's state of mind at several junctions in the criminal procedure: at the time of the alleged offense, at the time of arrest, at the time of trial and subsequent to trial with respect to disposition. Depending on the diagnosis, we advise with respect to treatment. If the client has a chronic mental illness that requires treatment, we emphasize the medical needs; if the client had an acute psychotic disorder at the time of the alleged offense that rendered him/her legally insane in our opinion, but the psychosis has remitted and the defendant is currently competent to stand trial and is not psychotic and does not need medical treatment, we can emphasize the legal issues.

The lawyer and client need to make their decisions based on a number of factors, one of which is our examination, evaluation and consultation. We can be very helpful in such cases depending on the diagnosis and recommendation for treatment.

Sometimes we have no control of the matter. In one similar case, I examined for the prosecution an elderly man charged with a relatively minor offense and found him to

meet the legal criteria for insanity in that jurisdiction. Normally, the defense counsel would be pleased with such an opinion about his client, but knew if he were found to be legally insane, he would likely spend more time in the hospital than he would spend in jail for the same offense. Without consulting me, the prosecutor and the defense counsel worked out a negotiated plea that allowed the defendant to receive probation with treatment. The prosecutor got his conviction and the defendant got a reasonable disposition. It all worked without my testimony.

Our input may be very helpful in such cases in order for the lawyer to make the best decision for the client. We do so by maintaining our role as medical expert and consultant.

Kaye:

This is not an uncommon situation. Lawyers generally will focus on the ability to get a not guilty verdict, often missing that if the charges are of a "low level," the client may end up spending more time "locked up" in a mental hospital than would be spent under a plea bargain or even under sentencing guidelines if found guilty of the original charges. In most states, NGRI acquittees are now given the equivalent of an "indefinite" sentence where the law prohibits release from a secure mental facility until the treatment team certifies that the person no longer poses a danger to the public.

GBMI was conceived in the aftermath of the Hinckley case with the idea that mental illness could be taken into consideration without it being exculpatory and with the belief that treatment would be more readily available in prison for the person. In fact, there is little evidence that a GBMI verdict results in treatment any different from a guilty plea itself. A person so labeled might get additional treatment in prison but might also face discrimination and taunting by other inmates. There remains a possibility that down the road when a prisoner applies for parole or pardon, that the GBMI finding might afford some leniency. This has yet to be shown and many experts question the value of the GBMI defense.

Sadoff/Kaye:

Take home point: Forensic psychiatrists often have more experience with a mental health defense than the attorney for whom they are working. Sharing your professional opinion and advice is appropriate, but remember, you are a doctor and

not a lawyer. If the lawyer seems open to being educated about this dilemma-civil liberty vs. a not guilty finding, proceed cautiously and deferentially.