



## Defensible or Not?

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The seal of the United States Department of Justice states, “*Qui Pro Domina Justitia Sequitur,*” which is thought to mean “who prosecutes on behalf of justice.” But what exactly is “justice” for those people who have psychiatric disorders and are accused of committing a crime? Where are the bounds of responsibility? If someone has brain pathology, such as in the famous case of Phineas Gage (who, in 1860, had a tamping iron pierce his skull, which you can visit at the Warren Anatomical Museum in the Harvard Medical School Countway Library (**Figure 1**),<sup>1</sup> that changed his personality for the worse), and then commits a crime, does that person have a criminal mind (*mens rea*)?



Figure 1. The skull of Phineas Gage. Reprinted with permission from the Center for the History of Medicine Francis A. Countway Library of Medicine website.<sup>1</sup>

If someone has delusions that he can save the world from Satan if he kills some people, is that person capable of knowing right from wrong and is that person responsible for his actions? If that person has command hallucinations to kill but that person knows it would be wrong to do so, is that person responsible? These are the type of questions at the intersection of psychiatry and the justice system, which arise daily.

And all too often and with numbing regularity, mass shootings occur in the United States, with the most recent large-scale tragedies this year in Las Vegas, NV, on October 1 (59 dead, 441 injured) and at a church in Southerland Springs, TX, (27 dead, 20 injured) on No-

vember 5 along with prior shootings in Newtown, CT, at Sandy Hook Elementary, and at Columbine High School in Littleton, CO. For an even more shocking view, look at the Gun Violence Archive on Mass Shootings,<sup>2</sup> which considers smaller and less publicized multiple shootings. How can we understand how these incomprehensible heinous acts occur? How can we prevent these shootings? How is psychopathology related to such horrible violence?

The more difficult questions arise retrospectively; someone commits a crime and then the defense looks back to find out if some psychiatric disorder explains the person’s criminal acts. Were they abused as a child? Did they have head trauma? Attention-deficit/hyperactivity disorder? Posttraumatic stress distress? Did they have a seizure or were they sleepwalking at the time they committed the act such that they were not aware of their actions and therefore could not reasonably be held responsible?

As a contemporary example, just look at the case of Aaron Hernandez, a former professional football player who was not only convicted of murder, but who died by

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suicide in jail and, upon autopsy, was found to have severe chronic traumatic encephalopathy at age 27 years.<sup>3</sup> Now his family is suing the National Football League.<sup>3</sup> Was Hernandez responsible or was the state of his brain such that he should not, in retrospect, have been convicted of murder?

Not all people who commit crimes are ill. Certainly, not all people who are ill commit crimes

and are more likely to be the victims of crime.<sup>4</sup> Courts face the difficult challenge of differentiating illness from evil and need the help of forensic psychiatrists to tell the difference.

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